No. 19-309

In the Supreme Court of the United States

GOVERNOR OF DELAWARE, PETITIONER

v.

JAMES R. ADAMS, RESPONDENT

ON CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED SEPTEMBER 4, 2019
CERTIORARI GRANTED DECEMBER 6, 2019

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NOTICE

*The following opinions, decisions, judgments, and orders have been omitted in printing the joint appendix because they appear on the following pages to the Petition for Writ of Certiorari:

U.S. DISTRICT COURT
DISTRICT OF DELAWARE (WILMINGTON)

Civil Docket for Case #: 1:17-cv-00181-MPT

JAMES R. ADAMS,

v.

HONORABLE JOHN CARNEY
Governor of the State of Delaware

RELEVANT DOCKET ENTRIES

DATE	NO.	PROCEEDINGS
02/21/2017	1	COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF - filed against John Carney – Magistrate Consent Notice to Pltf. (Filing fee $ 400, receipt number 0311-2088398.) - filed by James R. Adams. (Attachments: # 1 Civil Cover Sheet)(rwc) (Entered: 02/21/2017)
		* * *
03/21/2017	6	MOTION to Dismiss for Lack of Jurisdiction Over the Subject Matter - filed by John Carney. Motions referred to Mary Pat Thynge.(Sabesan, Roopa) (Entered: 03/21/2017)
03/21/2017	7	OPENING BRIEF in Support re 6 MOTION to Dismiss for Lack of Jurisdiction Over the Subject Matter filed by John Carney.Answering

		Brief/Response due date per Local Rules is 4/4/2017. (Attachments: # 1 Exhibit A, # 2 Certificate of Service) (Sabesan, Roopa) (Entered: 03/21/2017)
		* * *
04/10/2017	10	First AMENDED COMPLAINT against John Carney- filed by James R. Adarns.(Finger, David) (Entered: 04/10/2017)
04/17/2017	11	ANSWERING BRIEF in Opposition re 6 MOTION to Dismiss for Lack of Jurisdiction Over the Subject Matter filed by James R. Adams.Reply Brief due date per Local Rules is 4/24/2017. (Finger, David) (Entered: 04/17/2017)
		* * *
04/25/2017	14	ORDER: With the filing of the Answer to the Amended Complaint 13, the motion to dismiss for lack of subject jurisdiction 6 is rendered moot. Signed by Judge Mary Pat Thynge on 4/25/17. (cak) (Entered: 04/25/2017)
		* * *
09/29/2017	28	MOTION for Summary Judgment - filed by John Carney. (Connell, Ryan) (Entered: 09/29/2017)
09/29/2017	29	OPENING BRIEF in Support re 28 MOTION for Summary Judgment filed by John Carney.Answering Brief/Response due date per Local

		Rules is 10/13/2017. (Connell, Ryan) (Entered: 09/29/2017)
09/29/2017	30	APPENDIX re 29 Opening Brief in Support *of Motion for Summary Judgment* by John Carney. (Connell, Ryan) (Entered: 09/29/2017)
09/29/2017	31	MOTION for Summary Judgment - filed by James R. Adams. (Finger, David) (Entered: 09/29/2017)
09/29/2017	32	OPENING BRIEF in Support re 31 MOTION for Summary Judgment filed by James R. Adams.Answering Brief/Response due date per Local Rules is 10/13/2017. (Finger, David) (Entered: 09/29/2017)
		* * *
10/13/2017	34	ANSWERING BRIEF in Opposition re 31 MOTION for Summary Judgment filed by John Carney.Reply Brief due date per Local Rules is 10/20/2017. (Connell, Ryan) (Entered: 10/13/2017)
10/13/2017	35	ANSWERING BRIEF in Opposition re 28 MOTION for Summary Judgment , 31 MOTION for Summary Judgment filed by James R. Adams.Reply Brief due date per Local Rules is 10/20/2017. (Finger, David) (Entered: 10/13/2017)
		* * *

10/23/2017	37	REPLY BRIEF re 28 MOTION for Summary Judgment filed by John Carney. (Connell, Ryan) (Entered: 10/23/2017)
10/23/2017	38	REPLY BRIEF re 31 MOTION for Summary Judgment filed by James R. Adams. (Finger, David) (Entered: 10/23/2017)
12/06/2017	39	ORDER denying 28 Defendant's Motion for Summary Judgment and granting 31 Plaintiffs Motion for Summary Judgment. Signed by Judge Mary Pat Thynge on 12/6/17. (cak) (Entered: 12/06/2017)
12/06/2017	40	MEMORANDUM OPINION granting plaintiffs motion for summary judgment 31 and denying defendant's motion for summary judgment 28. Signed by Judge Mary Pat Thynge on 12/6/17. (cak) (Entered: 12/06/2017)

* * *

12/20/2017	42	MOTION for Reconsideration re 40 Memorandum Opinion, 39 Order on Motion for Summary Judgment, - filed by John Carney. (Connell, Ryan) (Entered: 12/20/2017)
12/21/2017	43	RESPONSE to Motion re 42 MOTION for Reconsideration re 40 Memorandum Opinion, 39 Order on Motion for Summary Judgment, filed by James R. Adams. (Finger, David) (Entered: 12/21/2017)

* * *

12/28/2017	49	REPLY to Response to Motion re 42 MOTION for Reconsideration re 40 Memorandum Opinion, 39 Order on Motion for Summary Judgment, filed by John Carney. (McBride, David) (Entered: 12/28/2017)
01/05/2018	50	NOTICE OF APPEAL of 40 Memorandum Opinion, 39 Order on Motion for Summary Judgment, . Appeal filed by John Carney. (Kraman, Pilar) (Entered: 01/05/2018)

* * *

02/21/2018	57	MOTION for Order to Show Cause *Why Defendant the Hon. John Carney Should Not Be Held in Contempt of Court and for Expedited Consideration* - filed by James R. Adams. (Attachments: # 1 Text of Proposed Order, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Exhibit D)(Finger, David) Modified on 3/8/2018 (cak). (Entered: 02/21/2018)
03/07/2018	58	RESPONSE to Motion re 57 MOTION for Order to Show Cause *Why Defendant the Hon. John Carney Should Not Be Held in Contempt of Court and for Expedited Consideration* filed by John Carney. (Attachments: # 1 Exhibit A)(McBride, David) Modified on 3/8/2018 (cak). (Entered: 03/07/2018)

* * *

03/13/2018	59	REPLY BRIEF re 57 MOTION for Order to Show Cause *Why Defendant the Hon. John Carney Sholuld Not Be Held in Contempt of Court and for Expedited Consideration* filed by James R. Adams. (Finger, David) (Entered: 03/13/2018)
05/23/2018	60	MEMORANDUM AND ORDER re 41 MOTION for Attorney Fees */For an Award of Fees and Costs Pursuant to 42 U.S.C. §1988 and Federal Rule of Civil Procedure 54(d)* filed by James R. Adams, 51 MOTION to Defer Ruling on Attorney's Fees and Costs Pending Appeal 41 MOTION for Attorney Fees */For an Award of Fees and Costs Pursuant to 42 U.S.C. §1988 and Federal Rule of Civil Procedure 54(d)* filed by John Carney, 57 MOTION for Order to Show Cause *Why Defendant the Hon. John Carney Should Not Be Held in. Contempt of Court and for Expedited Consideration* filed by James R. Adams, 42 MOTION for Reconsideration re 40 Memorandum Opinion, 39 Order on Motion for Summary Judgment filed by John Carney. Signed by Judge Mary Pat Thynge on 5/23/18. (cak) (Entered: 05/23/2018)
05/23/2018	61	MEMORANDUM OPINION Clarifying the Court's Opinion Issued December 6, 2017. Signed by Judge Mary Pat Thynge on 5/23/18. (cak)

(Main Document 61 replaced on 5/23/2018) (cak). (Entered: 05/23/2018)

05/23/2018 62 JUDGMENT ORDER: Consistent with the reasoning contained in the Memorandum Opinion of December 6, 2017 and Clarified in the Reissued Opinion dated May 23, 2018, IT IS ORDERED and ADJUDGED that plaintiffs motion for summary judgment (D.I. 31) is GRANTED, and defendants motion for summary judgment (D.1. 28) is DENIED. Signed by Judge Mary Pat Thynge on 5/23/18. (cak) (Entered: 05/23/2018)

06/01/2018 63 MOTION to Stay re 39 Order on Motion for Summary Judgment, 62 Judgment, *Pending Appeal* - filed by John Carney. (Attachments: # 1 Defendant's Certification Pursuant to D. Del. LR 7.1.1, # 2 Exhibit A, # 3 Text of Proposed Order)(Kraman, Pilar) (Entered: 06/01/2018)

* * *

06/12/2018 66 RESPONSE to Motion re 63 MOTION to Stay re 39 Order on Motion for Summary Judgment, 62 Judgment, *Pending Appeal (with Exhibit A)* filed by James R. Adams. (Finger, David) (Entered: 06/12/2018)

06/18/2018 67 REPLY to Response to Motion re 63 MOTION to Stay re 39 Order on Motion for Summary Judgment, 62 Judgment, *Pending Appeal* filed by

		John Carney. (Kraman, Pilar) (Entered: 06/18/2018)
06/20/2018	68	Amended NOTICE OF APPEAL of 40 Memorandum Opinion, 60 Memorandum and Order,,, 61 Memorandum Opinion, 39 Order on Motion for Summary Judgment, 62 Judgment, . Appeal filed by John Carney. (Kraman, Pilar) (Entered: 06/20/2018)
06/25/2018	69	MEMORANDUM ORDER IT IS ORDERED that defendant's Motion to Stay 63 is GRANTED. The court's judgment Order 39 62 is hereby STAYED pending appeal to the United States Court of Appeals for the Third Circuit. Signed by Judge Mary Pat Thynge on 6/25/18. (cak) (Entered: 06/25/2018)
		* * *
05/15/2019	82	MANDATE of USCA as to 50 Notice of Appeal (Third Circuit) filed by John Carney. USCA Decision: Affirmed in Part/Reversed in Part.(Attachments:#(1) Opinion)(cw,) (Entered: 05/15/2019)

UNITED STATES DISTRICT COURT OF APPEALS
FOR THE DISTRICT OF DELAWARE

Court of Appeals Docket #: 18-1045

JAMES R. ADAMS,

v.

GOVERNOR OF DELAWARE

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
01/14/2018	CIVIL CASE DOCKETED. Notice filed by Appellant Governor of Delaware in District Court No. 1-17-cv-00181, (CJG) [Entered: 01/14/2018 12:58 PM]
	* * *
07/18/2018	ECF FILER: ELECTRONIC BRIEF with Volume I of Appendix attached on behalf of Appellant Governor of Delaware, filed. Certificate of Service dated 07/18/2018 by ECF, Email, hand delivery. [18-1045] (DCM) [Entered: 07/18/2018 02:53 PM]
07/18/2018	ECF FILER: ELECTRONIC JOINT APPENDIX on behalf of Appellant Governor of Delaware, filed. Certificate of service dated 07/18/2018 by ECF, Email, hand delivery. [18-1045] (DCM) [Entered: 07/18/2018 02:58 PM]
	* * *

07/19/2018 ECF FILER: ELECTRONIC ADDENDUM to APPENDIX on behalf of Appellant Governor of Delaware containing Docket of United States District Court for the District of Delaware Civil Action No. 17-181-MPT. Certificate of Service dated 07/19/2018 by ECF, Email, hand delivery. [18-1045] (PGK) [Entered: 07/19/2018 08:36 PM]

* * *

08/15/2018 ECF FILER: ELECTRONIC BRIEF on behalf of Appellee James R. Adams, filed. Certificate of Service dated 08/15/2018 by hand delivery. [18-1045] (DLF) [Entered: 08/15/2018 12:35 PM]

* * *

08/31/2018 ECF FILER: ELECTRONIC REPLY BRIEF on behalf of Appellant Governor of Delaware, filed. Certificate of Service dated 08/31/2018 by ECF, Email, hand delivery. [18-1045] (DCM) [Entered: 08/31/2018 03:05 PM]

* * *

09/13/2018 ECF FILER: SUMMARY OF ORAL ARGUMENT submitted by Attorney David C. McBride, Esq. for Appellant Governor of Delaware. Case Summary: Whether Plaintiff has standing to challenge constitutionality of Art. IV, Sec. 3 of Del. Constitution for appointment of Judges to certain Del. Courts; and whether political balance requirements of Art. IV, Sec. 3 violate Plaintiffs

1st Amendment rights.. Post Video: YES. [18-1045] (DCM) [Entered: 09/13/2018 03:37 PM]

09/25/2018 COURT MINUTES OF ARGUED/ SUBMITTED CASES. [17-3318, 15-3213, 18-1045, 17-2373, 17-3397, 17-3415, 17-3748] (CMH) [Entered: 09/25/2018 07:11 AM]

09/25/2018 ARGUED on Tuesday, September 25, 2018. Panel: MCKEE, RESTREPO and FUENTES, Circuit Judges. David L. Finger arguing for Appellee James R. Adams; David C. McBride arguing for Appellant Governor of Delaware. (CMH) [Entered: 09/25/2018 01:00 PM]

02/05/2019 PRECEDENTIAL OPINION Coram: MCKEE, RESTREPO and FUENTES, Circuit Judges. Total Pages: 39. Judge: FUENTES Authoring, Judge: MCKEE Concurring, Judges Restrepo and Fuentes join. [-VACATED Per Courts 4/10/19 Order.]--[Edited 04/10/2019 by CJG] (LM R) [Entered: 02/05/2019 08:52 AM]

02/05/2019 JUDGMENT, the revised judgment of the District Court entered on May 23, 2018 granting the Appellee's motion for summary judgment and denying the Appellant's motion for summary judgment and the order entered May 23, 2018 denying the Appellant's motion for reconsideration are AFFIRMED in part and REVERSED in part. Each party to bear its own costs. [-VACATED Per Court's 4/10/19 Order.]--[Edited 04/10/2019

by CJG] (LMR) [Entered: 02/05/2019 08:58 AM]

* * *

02/13/2019 ORDER AMENDING OPINION (Coram: MCKEE, RESTREPO and FUENTES, Circuit Judges) On page 11, the text of footnote 16 shall be replaced. An amended precedential opinion is being filed concurrently with this Order. The amendment does not substantively change the Opinion, therefore, the filing date of the Opinion will not be modified nor the judgment., Fuentes, Authoring Judge. (LMR) [Entered: 02/13/2019 10:29 AM]

02/13/2019 AMENDED PRECEDENTIAL OPINION Coram: MCKEE, RESTREPO and FUENTES, Circuit Judges. Total Pages: 39. Authoring Judge: Fuentes: MCKEE Concurring, Judges Restrepo and Fuentes join. [-VACATED Per Court's 4/10/19 Order.]--[Edited 04/10/2019 by CJG] (LMR) [Entered: 02/13/201910:32 AM]

02/18/2019 ECF FILER: Petition filed by Appellant Governor of Delaware for Rehearing before original panel and the court en banc. Certificate of Service dated 02/18/2019. Service made by ECF, Email, hand delivery. [18-1045] (DCM) [Entered: 02/18/2019 05:25 PM]

04/10/2019 ORDER filed (Coram: MCKEE, RESTREPO and FUENTES, Circuit Judges) The Petition for Rehearing by the panel is granted. The Court's judgment entered February 5, 2019, and the

Court's precedential opinion as amended February 13, 2019 are hereby VACATED. A subsequent opinion and judgment will be issued. Authoring Judge: Fuentes. *As the merits panel has vacated the prior opinion and judgment, action is not required by the en banc court. Judges Jordan and Bibas have voted for rehearing en banc. (CJG) [Entered: 04/10/2019 10:27 AM]

04/10/2019 PRECEDENTIAL OPINION Coram: MCKEE, RESTREPO and FUENTES, Circuit Judges. Total Pages: 44. Judge: FUENTES Authoring, Judge: MCKEE Concurring. (CJG) [Entered: 04/10/2019 10:32 AM]

04/10/2019 JUDGMENT, Affirmed In Part and Reversed In Part. Each party to bear its own costs. (CJG) [Entered: 04/10/2019 10:35 AM]

* * *

04/23/2019 ECF FILER: Petition filed by Appellant Governor of Delaware for Rehearing before original panel and the court en banc. Certificate of Service dated 04/23/2019. Service made by ECF, Email, hand delivery. [18-1045] (DCM) [Entered: 04/23/2019 04:24 PM]

05/07/2019 ORDER (SMITH, Chief Judge, MCKEE, AMBRO, CHAGARES, JORDAN, HARDIMAN, GREENAWAY JR., SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY and FUENTES*, Circuit Judges) denying

	Petition En Banc and Panel Rehearing filed by Appellant Governor of Delaware, filed. Fuentes, Authoring Judge. *Pursuant to Third Circuit I.O.P. 9.5.3., Judge Fuentes's vote is limited to panel rehearing. **Judges Jordan, Hardiman, Krause, and Bibas voted to grant rehearing. (LMR) [Entered: 05/07/2019 02:45 PM]
05/15/2019	MANDATE ISSUED, filed. (CLW) [Entered: 05/15/2019 05:25 PM]
07/18/2019	U.S. Supreme Court Letter dated 07/16/2019 granting Appellant Governor of Delaware an extension of time to and including 09/04/2019 to file petition for writ of certiorari. Supreme Court Application No. 19A57. (CRG) [Entered: 08/12/2019 05:25 PM]
09/09/2019	NOTICE from U.S. Supreme Court. Petition for Writ of Certiorari filed by Governor of Delaware on 09/04/2019 and placed on the docket on 09/06/2019, Supreme Court Case No. 19-309. (AWI) [Entered: 09/09/2019 02:44 PM]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

C.A. No. 1:17-cv-00181 (VAC-MPT)

JAMES R. ADAMS,

Plaintiff,

v.

THE HON. JOHN CARNEY,
Governor of the State of Delaware,

Defendant.

FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF UNDER 42 U.S.C. §1983[1]

INTRODUCTION

1. Plaintiff James R. Adams brings this action pursuant to 42 U.S.C. §1983 to have that portion of Article IV, Section 3 of the Constitution of the State of Delaware requiring that judges in Delaware be selected based, in part, on their political affiliation, and excluding members of minority political parties, be declared unconstitutional as being in violation of the right to freedom of political association guaranteed by the First Amendment to the Constitution of the United States.

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[1] This First Amended Complaint is being filed as of right pursuant to Fed. R. Civ. P. 15(a)(1)(B). Changes are underlined for convenience.

PARTIES

2. Plaintiff James R. Adams is a graduate of Ursinus College and Delaware Law School. He member of the Bar of the State of Delaware. He resides in New Castle County, Delaware. After three years in private practice, he went to work for the Delaware Department of Justice. There, he served as Assistant State Solicitor under Attorney General Beau Biden. He has also served as Deputy Division Director of the Family Division, which handles cases involving domestic violence, child abuse and neglect, child support orders, and juvenile delinquency and truancy. He retired from the Department of Justice on December 31, 2015. Until recently, he was registered as a Democrat, but is currently registered as an Independent.

3. Defendant the Hon. John Carney is the Governor of the State of Delaware. Pursuant to Article IV, Section 3 of the Constitution of the State of Delaware, the Governor is responsible for appointing judges to Delaware state courts. Since 1977, Delaware governors have established by executive order a judicial nominating commission to identify highly qualified candidates for judicial appointments. Ten of the eleven members of the Commission are appointed by the Governor. The president of the Delaware State Bar Association, with the Governor's consent, nominates the eleventh member, who is then appointed by the Governor. The judicial nomination commission provides to the Governor a list of recommended candidates.

VENUE, SUBJECT MATTER JURISDICTION AND STANDING

4. Venue is appropriate in this Court pursuant to 28 U.S.C. §1391(b), as all of the parties in this action

reside in Delaware and all of the events involved in this action took place in Delaware.

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1331 as the case arises under the First Amendment to the Constitution of the United States and 42 U.S.C. §1983.

6. Mr. Adams has standing to bring this challenge as he is a member of the Delaware Bar who at various times has desired to apply for a judgeship but has been unable to do so in certain circumstances because he was not of the required political party. As a general matter, to establish standing to challenge an allegedly unconstitutional policy, a plaintiff must submit to the challenged policy. That requirement for standing, however, may be excused only a plaintiff shows that application for the benefit would have been futile. Application would have been futile because Article IV, Section 3 of the Constitution of the State of Delaware mandates political balance, and the Judicial Nominating Commission and the Governor would be required to abide by that law. Because of the political affiliation limitations imposed by the Delaware Constitution, applying for a judgeship in those circumstances would constitute a futile act, thereby excusing Mr. Adams from having to engage in such act to have standing.

7. After leaving the Department of Justice, Mr. Adams took a brief sabbatical, and now is ready to get back to work. He has desired and still desires a judgeship. He contacted the State of Delaware Office of Pensions to inquire what would happen to his pension if he were appointed to a judgeship. He was informed that, during his time as a judge his pension would be suspended, but would be restored after he retired from the Bench.

8. Several vacancies were announced. On February 14, 2017, the Judicial Nominating Committee sent out a Notice of Vacancy due to the retirement of the Honorable Robert Young. On March 20, 2017, the Judicial Nominating Committee sent out a Notice of Vacancy due to the retirement of the Honorable Randy Holland of the Delaware Supreme Court. Prior to that official announcement (and prior to the filing of the initial Complaint in this action), Mr. Adams heard word that Justice Holland would be retiring. He was (and is) interested in Justice Holland's seat, but was inhibited from applying because of the announced limitation that the candidate had to be a Republican. Since Mr. Adams was not (and is not) a Republican, any application he would make would be immediately rejected, and so applying was futile.

BACKGROUND

9. Article IV, Section 3 of the Constitution of the State of Delaware contains a provision, unique to Delaware, which provides, in pertinent part, that:

> Appointments to the office of the State Judiciary shall at all times be subject to all of the following limitations:
>
> First, three of the five Justices of the Supreme Court in office at the same time, shall be of one major political party, and two of said Justices shall be of the other major political party.
>
> Second, at any time when the total number of Judges of the Superior Court shall be an even number not more than one-half of the members of all such offices shall be of the same political party; and at any time when the number of such offices shall be an odd

number, then not more than a bare majority of the members of all such offices shall be of the same major political party, the remaining members of such offices shall be of the other major political party.

Third, at any time when the total number of the offices of the Justices of the Supreme Court, the Judges of the Superior Court, the Chancellor and all the Vice-Chancellors shall be an even number, not more than one-half of the members of all such offices shall be of the same major political party; and at any time when the total number of such offices shall be an odd number, then not more than a bare majority of the members of all such offices shall be of the same major political party; the remaining members of the Courts above enumerated shall be of the other major political party.

Fourth, at any time when the total number of Judges of the Family Court shall be an even number, not more than one-half of the Judges shall be of the same political party; and at any time when the total number of Judges shall be an odd number, then not more than a majority of one Judge shall be of the same political party.

Fifth, at any time when the total number of Judges of the Court of Common Pleas shall be an even number, not more than one-half of the Judges shall be of the same political party; and at any time when the total number of Judges shall be an odd number, then not more than a majority of one Judge shall be of the same political party.

10. Thus, the Constitution of the State of Delaware requires that:

a. A bare majority of the Delaware Supreme Court must be members of "one major political party, " with the rest having to be members "of the other major political party." Although the Constitution of the State of Delaware does not define the phrase "major political party, " the Delaware Code defines it as "any political party which, as of December 31 of the year immediately preceding any general election year, has registered in the name of that party voters equal to at least 5 percent of the total number of voters registered in the State, " 15 Del. C. §101(15);

b. When there is an even number of judges of the Superior Court, half of the seats must be filled by members of one political party. Where there is an odd number of judges of the Superior Court, a "bare majority" of the seats must be filled by members of one "major political party" with the remaining seats to be filled by members of "the other major political party";

c. When there are an even number of seats of the Supreme Court, the Superior Court and the Court of Chancery, not more than half of those seats must be held by members of the same political party. If there are an odd number of the total seats amongst those three courts, no more than a bare majority may be filled by members of one "major political party," and the

remaining seats "shall be of the other major political party";

d. In the Family Court and the Court of Common Pleas, if there are an even number of seats, no more than half of those seats may be held by members of the same political party. If there are an odd number of seats, members of the same political party may constitute only a bare majority of the total number of seats.

11. When the Judicial Nominating Commission sends out notices of judicial vacancies (examples of which are attached hereto as Exhibit A), the notices state which political party will be considered for a given opening.

12. The First Amendment to the Constitution of the United States of America states, in pertinent part, that "Congress shall make no law ... abridging ... the right of the people peaceably to assemble." This clause has given rise to what is known as the "freedom of association. "

13. Under the First Amendment freedom of association, the government may not exclude anyone from public employment on the basis of their political affiliation. The basic right of political association is assured by the First Amendment to the United States Constitution and is protected against state infringement by the Fourteenth Amendment.

14. It is well settled that a state may not condition hiring or discharge of employees in a way which infringes on their right to political association. It is equally well established that conditioning hiring decisions on political belief and association plainly constitutes an unconstitutional condition.

15. There are two recognized exceptions to the constitutional restriction on employment based on political association: (i) where the position is high enough that the job has direct influence on policy, or (ii) where the employee's private political beliefs would interfere with the discharge of his or her public duties.

16. Neither of those exceptions apply here. Delaware judges have consistently stated that it is the job of the Legislature, and not the courts, to set policy. And no one suggests that, other than appearing before the Legislature to request funding, Delaware judges have any policy-related interaction with government officials.

17. Further, Delaware judges of both political parties have served the State honorably, without fear or favor. There has never been occasion to question a judge's ruling as being based on his or her political affiliation. As such, there is no basis to conclude that a judge's private political beliefs would interfere with the performance of his or her public duties.

18. Several rationales have been offered over the years for the benefits of a politically balanced judiciary. None of them stand up to analysis, and none of them are sufficient to overcome the high burden necessary to overcome First Amendment protections. They are addressed below:

a. It has been said that a politically balanced judiciary helps emphasize the expertise and independence of the judiciary. Delaware already has a built-in incentive to maintain the high quality of its judiciary. As part of its effort to continue to attract and maintain entity formations and related litigation in Delaware (with corporate

franchise taxes being a significant part of Delaware's revenue), Delaware touts the high quality and expertise of its judiciary in addressing corporate and commercial issues. This does not rationally come from political affiliation or balance, but rather from selecting judges for their knowledge, intellectual rigor and sense of justice. Those qualities are not the exclusive province of one political party, and the absence of a political balance requirement would free the Governor to choose from either political party to draw on the expertise of a candidate belonging to the other major party without generating partisan political repercussion. The absence of political balance poses no risk to the State's ability to find and seat the best and the brightest.

b. It is also been said that political balance is necessary to insure that the courts are fair and impartial. Yet the other 49 states do not require political balance, and while there may be complaints about the fairness of a ruling (as there no doubt are similar gripes about the occasional Delaware ruling), there is no evidence that Delaware's rulings are either more or less fair and impartial than the rulings of any other state (or, for that matter, the federal judiciary). Moreover, Canon 2, Rule 2.5(A) of the Delaware Judges Code of Judicial Conduct provides that " [a] judge should be unswayed by partisan interests, public clamor, or fear of criticism. " One federal court of appeals has stated that "Partisan balance amongst the judges who comprise the

court, alone, has little bearing on impartiality. " *Common Cause Indiana v. Individual Members of the Indiana Election Com'n*, 800 F.3 913, 924 (7th Cir. 2015).

c. It has been suggested that political balance assures that election fraud issues (which have not been an issue in Delaware) are not decided purely (as opposed to mostly) by one party. This proposition improperly assumes that the governor of one party will fill the courts with political hacks who will do the party's bidding. The incentives discussed above would protect against a judiciary of political hacks.

d. It has been said that political balance helps insure a non-politicized judiciary. As stated previously, there are already built-in incentives to avoid that appearance. Moreover, there is no assurance that decisions of a given judge or a panel of the Delaware Supreme Court would be decided lockstep with their political party's position.

e. It has been said that political balance has helped attract people of exceptional ability and dedication to serve as judges. Again, those qualities are not the province of any one political party, nor is there any basis to suggest that, absent political balance, highly-qualified lawyers will be inhibited from applying. To the contrary, the absence of a requirement of political balance will encourage people, regardless of political affiliation, to seek appointment.

19. As shown above, none of the arguments set forth above satisfies the high burden necessary to overcome the First Amendment freedom of association.

20. Article IV, Section 3 of the Constitution of the State of Delaware deprives Mr. Adams and all Delaware lawyers of opportunities for judicial appointments because of their political affiliation, in violation of the First Amendment to the Constitution of the United States.

21. The Governor makes judicial appointments pursuant to the authority granted to him by the Constitution of the State of Delaware. He is currently compelled by the Constitution of the State of Delaware to exercise that authority in a politically discriminatory way. The Governor takes these actions under color of state law.

WHEREFORE, for the foregoing reasons, plaintiff James R. Adams respectfully requests that this Court enter an Order (i) holding that the provision of Article IV, Section 3 of the Constitution of the State of Delaware mandating political balance on the courts is unconstitutional as it violates the freedom of association guaranteed by the First Amendment to the Constitution of the United States, (ii) permanently enjoining the use of political affiliation as a criterion for the appointment of judges to the Courts of Delaware, and (iii) awarding Mr. Adams his costs and reasonable attorneys' fees pursuant to 42 U.S.C. §1988.

Respectfully submitted,

/s/ David L. Finger

David L. Finger (ID #2556)
Finger & Slanina, LLC
One Commerce Center
1201 N. Orange St., 7th fl.
Wilmington, DE 19801
(302) 573-2525
Attorney for plaintiff James R. Adams

Dated: April 10, 2017

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

C.A. No. 1:17-CV-00181
(VAC-MPT)
JURY TRIAL DEMANDED

JAMES R. ADAMS,
Plaintiff,

v.

THE HON. JOHN CARNEY,
Governor of the State of Delaware,
Defendant.

APPENDIX TO THE HON. JOHN CARNEY'S OPENING BRIEF IN SUPPORT OF HIS MOTION FOR SUMMARY JUDGMENT

STATE OF DELAWARE DEPARTMENT OF JUSTICE
AARON R. GOLDSTEIN (#3735)
State Solicitor
Carvel State Building, 6th Floor
Wilmington, Delaware 19801
(302) 577-8400

STATE OF DELAWARE DEPARTMENT OF JUSTICE
CHRISTIAN DOUGLAS WRIGHT (#3554)
RYAN P. CONNELL (#5423)
Deputy Attorneys General
Carvel State Building, 6th Floor
Wilmington, Delaware 19801
(302) 577-8400
Attorneys for The Hon. John Carney

Date: September 29, 2017

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James R. Adams

September 13, 2017

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Wilcox & Fetzer, Ltd.
1330 King Street
Wilmington, DE 19801

email: depos@wilfet.com, web: www.wilfet.com
phone: 302-655-0477, fax: 302-655-0497

[LOGO]

Original File Adams v. The Hon
09-13-17 depo of James Adams.txt

Min-U-Script(R) with Word Index

[1] IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

C.A. No. 1:17-CV-00181-MPT

JAMES R. ADAMS,
Plaintiff,

v.

THE HON. JOHN CARNEY,
Governor of the State of Delaware,
Defendant.

Deposition of JAMES R. ADAMS taken pursuant to notice at the offices of the Department of Justice, 820 North French Street, Wilmington, Delaware, beginning at 9:50 a.m., on Wednesday, September 13, 2017, before Kimberly A. Hurley, Registered Merit Reporter and Notary Public.

WILCOX & FETZER
Registered Professional Reporters
1330 King Street - Wilmington, Delaware 19801
(302) 655-0477
www.wilfet.com

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[2] APPEARANCES:

DAVID L. FINGER, ESQUIRE
FINGER & SLANINA, LLC
1201 North Orange Street - 7th Floor
Wilmington, Delaware 19801
for the Plaintiff

RYAN P. CONNELL, DEPUTY ATTORNEY GENERAL
DEPARTMENT OF JUSTICE
820 North French Street
Wilmington, Delaware 19801
for the Defendant

---

[3] JAMES R. ADAMS, the witness herein, having first been duly sworn on oath, was examined and testified as follows:

BY MR. CONNELL:

Q. I know you have been through this process before, but just the usual reminder about verbalizing the responses, no hand gestures. But I think you know the drill.

A. Yes.

Q. Could you just state your full name for the record?

A. James Adams.

Q. I got your interrogatory responses, and I did just want to clarify some stuff on the dates.

A. Sure.

MR. FINGER: Do you have a copy for me to review with you?

MR. CONNELL: I don't have another copy.

MR. FINGER: We won't insist on it unless Mr. Adams has a question.

MR. CONNELL: I'm just going to [4] ask questions about some of the things we're going to discuss.

BY MR. CONNELL:

Q. It says that in 2015 you retired from the DOJ?

A. Yes. I took my pension in the end of 2015. The last day of the year.

Q. You went all the way to the end of 2015?

A. Yes.

Q. Right before New Year's.

A. December 31st of '15 was my last day.

Q. What have you been doing professionally since then?

A. I retired at the end of '15, and I decided to take my own personal sabbatical for a little while in '16 because I had never taken any time off in my life. As a matter of fact, I worked in high school, worked my way through college, and worked forever. And I always envied people that were able to take a little time off. So since I had been working forever, I started to take a few months off in '16, and then made up my mind I was going to [5] take a year off and then go back to work the beginning of '17.

So I went on emeritus status through the Bar, knowing that I wasn't going to work and kind of take a sabbatical in '16, and then went back active the beginning of '17 when I decided I wanted to start working again.

Q. I'm not familiar with emeritus status.

A. Without having the rules in front of me, I'm not sure I will get it exactly correct, but emeritus status, it reduces your Bar fee, first of all, and you're not allowed to do private practice. You can do pro bono work, but no work for income, basically.

Q. Would you say the main benefit would be reducing fee?

A. Reducing fee. Also to me was I wasn't really planning on actively looking for a job right at that time anyway, so it kind of made sense, because what I had done was, I had called the Bar Association and said, I want to continue to be active, I want to continue to work, but I want to take a sabbatical for a [6] little while, what's the best thing to do. And it was actually -- it was actually their response, why don't you go emeritus for a while and then go back active when you're actively looking for a job again. I kind of took their recommendation on what to do.

Q. So 2016 and your emeritus status has come and gone for a good way through 2017. Are you --

A. I thought long and hard what I wanted to do. I wanted to apply for a judicial position. It was really the only thing that I hadn't done in my career that I really wanted to do. And that's what I decided to do when I became active again.

Q. So you haven't been looking for other opportunities?

A. No.

Q. I just wanted to confirm, your address is in Townsend?

A. Yes.

Q. That's New Castle County?

A. Yes.

Q. Your interest now is applying for a [7] judicial vacancy of some sort.

A. Uh-huh.

Q. Could you elaborate a little bit on what particular judicial positions interest you?

A. I would apply for any judicial position that I thought I was qualified for, and I believe I'm qualified for any position that would come up.

Q. On any of the courts?

A. On any of the courts. I would feel less comfortable on Chancery than any other court. I would feel most comfortable on Superior Court, Family Court, Court of Common Pleas, state Supreme Court based on my background, experience, and what I have done in my career.

Q. I notice in your interrogatory responses you indicated that you had applied for a Family Court commissioner job in --

A. 2009 I believe it was, yes.

Q. What prompted you to apply for that?

A. I was working in the Family Division. I was supervising the Juvenile Delinquency and [8] Truancy Unit. I thought about -- I had thought before about applying for a position, but I was a little concerned about the need for political connections to apply for a position and get on the bench, and at that time as a supervisor here, I had a lot of contact with the chief judge of Family Court, and the chief judge of Family Court, in addition to a couple other judges in Family Court, kind of said, you should apply. The Chief judge in particular said she would like to have me as a commissioner in Family Court, that she thought I would be good as a commissioner and she could work well with me.

Q. So you applied, but you were not selected?

A. I was not selected.

Q. The commissioner jobs, do they go through the JNC process?

A. Yes.

Q. So you had an interest in some sort of a judicial position in 2009. Is there a reason you didn't apply for any other judicial positions since 2000, then?

[9] A. When I was here at the Department of Justice, I moved up from a regular deputy position to supervisor of the Juvenile Delinquency Unit. First, I was supervisor of the Child Protection Unit and then supervisor of the Juvenile Delinquency Unit and then deputy state solicitor. So I was going through a process where I was getting promotions here. Since I was getting promotions here, I was happy with what I was doing. It became kind of secondary.

There was also -- I loved working for Beau Biden, and I had a lot of respect for Beau Biden, and I wanted to stay here as long as Beau was Attorney General. And loyalty is very important to me, and I felt very loyal to Beau, and I didn't think it was right to leave while Beau was here. And I also in my mind had a hope that -- I think a number of us felt that Beau was eventually going to run for governor, and my hope was that he would stay here as attorney general until the time he ran for governor, and I thought I would eventually find some spot to [10] stay in state government with Beau as governor.

Things changed when Beau got ill, and then in, I think it was, 2014, if I remember, a couple positions came up, and I thought of applying, but they were republican. They were designated as republican positions. So I couldn't apply.

And then Beau died. That also -- Beau dying also had an impact on me, and what I did over that next year, year and a half up until now, because when Beau died, it had a personal impact on me because I really admired Beau, but it was also -- professionally it kind of changed direction or possibilities that professionally I would have thought about.

Q. I can't recall. Did Beau step down from AG before he passed away?

A. Yes. He finished his term in -- let me see if I get -- the end of '14, and Matt Denn was elected at the November of '14 and -- but Beau had announced before he left that he was running for governor and then he [11] died in '15. He died during that last year that I was still here.

And Beau, although he was very ill, I think was still hoping that he would recover. And a lot of us were praying for the same thing. So that last year when I was still here he still officially was running for governor.

Q. So the transition from Beau to Matt was in January of 2015?

A. Yes.

Q. It all runs together for me.

A. Yes.

Q. Let me ask you another question about dates. You indicated in the interrogatory that you switched your party affiliation in 2017?

A. Yes.

Q. Can you be a little more specific on when?

A. I think I listed it in the interrogatory. If not, I don't have the date like right in front of me, but it was in the beginning of 2017.

[12] Q. I think you just put 2017.

A. I can get the date -- I don't have the date right in front of me.

MR. FINGER: Be careful not to talk over each other.

BY MR. CONNELL:

Q. So beginning of 2017 works for me.

A. It was the beginning of 2017. I mean, I have the date. I have a voter registration card. I can provide that information. I just don't have it in front of me.

Q. Would you happen to know off the top of your head if it was January or February?

A. It was probably January or February I would say.

MR. FINGER: We will be happy to provide that.

BY MR. CONNELL:

Q. Other than your counsel, Mr. Finger, who have you discussed this lawsuit with?

A. Joel Friedlander, who's an attorney here in Wilmington.

Q. Do you know when you first communicated with him about this?

[13] A. When I decided that I wanted to pursue this, I had done a little bit of research. I was aware of this issue for years. This wasn't something that just came up now. I was aware of this issue for years and discussed it with other people for years, including people in this office who, in private conversations, had said that the political balance part of the constitution was

unconstitutional. And people who had said to me that someone needs to challenge sometime.

So when this came up and I decided to do this, I had went back and done a little bit of research. I had researched some of this in the past just out of curiosity, but this time when I researched it, I saw a Law Review article that Joel Friedlander had written for Arizona Law Review recently, over the past couple years. And I had never read it before. And it was excellent, and it had all the points in it that I had always thought.

And so I called him up and said, you know, "I just read your Law Review [14] article. I'd like to pursue this." And we talked. He gave me the names of a couple of attorneys, and that's how. . .

Q. Do you know when that conversation with Friedlander was?

A. Again, it would have been the beginning of that -- beginning of this year, January/February.

Q. So very shortly before you filed this?

A. Yeah. Beginning of the year. It was not -- it was sometime this year, put it that way. Beginning of the year, January/February.

Q. You say this has been an issue on your radar for years.

A. Oh, yes.

Q. Maybe you can't, but do you have any idea how many years, like how long this has been on your radar?

A. Fifteen, twenty years. I don't remember the first time I ever had a discussion about this, but I remember having a lengthy discussion with the division director here in the Department of Justice a few — number of years ago, going back 10 or 12 years [15]

ago, and saying to the division director here, who was actually applying to be a judge: "How do they justify this as being constitutional? It's unconstitutional."

And the division director, who was applying to be a judge, said, "Oh, yeah, it's unconstitutional. Most people know it's unconstitutional, but nobody wants to challenge it because they know it will injure their career."

I actually brought it up in informal conversations with judges at Family Court on more than one occasion and said, "How does this continue? It's unconstitutional."

And they said, "Yeah, but it's like the Delaware way and no one's going to challenge it. So as long as no one challenges it, it's going to stay that way."

With other attorneys I discussed this through the years and they pretty much said, look, a younger, up-and-coming attorney is not going to challenge the constitutionality of the political balance for judicial appointments because it will have a [16] negative impact on their career, so why would they. What they will do is join one party or the other and work as hard as they can for that party and make political contributions and work the system to try to get on the bench. They're not going to get anything out of fighting it because it's unconstitutional.

So I have had that conversation with people for years, a lot of years, and all the conversations I had with people that I said, "I don't understand how this is constitutional. It seems unconstitutional to me," I think everyone I ever talked to agreed with me and said, yeah, it's unconstitutional, but it's the way it's done in Delaware.

Q. Is it your position that politics don't play a role in other jurisdictions?

A. No, but as far as I know, Delaware is the only jurisdiction that requires political balance and that divvies up positions based solely on politics, political parties, and that eliminates any possibility of other than democrats and republicans serving on certain courts.

[17] I mean, if we were sitting here and talking about anything other than requirements being political, we wouldn't be having this discussion. If Delaware had a constitution that said, you know, a certain race or religion or gender was eliminated from being judges, everyone would say that's obviously discrimination. About one-quarter to one-third of the population in Delaware is registered as independents; they're not allowed to be judges.

Q. You would say in the federal system it would be unusual, in your experience, for a president to appoint someone outside of his party?

A. As far as I know, there is no requirement in the federal system that says you have to be a member of a specific party to apply for that position. As a matter of fact, I read an article in the paper just a week or so ago about the speculation of who would be the new federal judge here in Delaware, and it was two republicans and a democrat. I mean, whoever is making that choice can make their [18] choice, but you don't eliminate the possibility of someone applying for the position.

Q. On the subject of politics, you indicated, and we discussed it, that this year you switched your party affiliation from democrat to independent.

What prompted that change?

A. There's probably two or three factors went into that. I have been a democrat my whole life and actually worked within the democratic party here in Delaware, worked within my district in the democratic party and gave that up because I was very frustrated with the workings of the democratic party when I volunteered.

I am a progressive, and I tend to be much more progressive and liberal than democrats in Delaware. Most democratic leaders in Delaware to me are not really progressive democrats. In most states they would be moderate republicans. I don't consider people like Senator Carper a progressive democrat. I worked in this office [19] and saw a lot of the workings behind the scenes with the Markell administration and I thought that Governor Markell performed more as a republican than a progressive democrat.

So I had a frustration with -- and I think a number of progressives have a frustration with the Delaware democratic party anyway.

But the one person that I really had hoped for and admired was Beau Biden, who I did think was progressive, and I was in meetings with Beau on so many occasions. I knew he was different and knew he was the one that I had hopes that something would change within the democratic party in Delaware because of Beau. But when Beau died, to me that didn't leave anybody that I could really align with, feel comfortable -- as comfortable with in Delaware.

And then during the presidential campaign, which I spent, like everybody else spent, a lot of time following, I admired Bernie Sanders and what he stood for and what he did and the message he gave out, and I [20] think if Bernie Sanders would have been nominated,

he would be beat Trump in an election, and I think the fact that he wasn't gave us Trump as a president.

So at some point the combination of everything combined with me led me to think that I should change party registration to an independent. So if -- independents are independents for different reasons. I would probably consider myself more of a Bernie independent because I consider myself in a different position than democrats at this point. And that's not just maybe locally but nationally at this point, because I think if the democratic party starts to change and go in that direction, they're going to face difficulty.

So it was a personal -- that's a long answer, but it was a personal choice based on a lot of thought and a lot of process that went over a pretty long period of time.

Q. I understand what you're saying, but wasn't it sort of obvious that the machine was kind of working against Bernie Sanders well [21] before 2017?

MR. FINGER: I think you have to lay a foundation for him to be able to answer that question.

BY MR. CONNELL:

Q. I think you sort of testified that you felt that Sanders sort of got nucleated out of the running.

A. That's not what I meant, if that's the way it came off. What I meant was that I think that -- I think people become energized by certain politicians and the idea and policies that they present, and I felt myself energized by Bernie Sanders and what he -- the message he had. And I have found over a number of years that I'm not as energized by what's often a much more moderate message from democrats here locally in Delaware and sometimes nationally. So that kind of

doesn't leave a lot of choices in terms of party affiliation.

Q. You mentioned in this deposition and in your interrogatories that you were interested in applying to some judicial [22] positions I think in '14?

A. I think there was a Superior Court -- if I can recall correctly, a Superior Court position and Supreme Court position.

Q. Just look that over for a minute.

A. (Complied.)

I don't recall, to be honest. I don't recall this position. And I don't know at that point in year what was going on in '14. So I don't -- no, I don't recall.

Q. My only question is: By looking that over, you'd agree that you were qualified to apply for that job?

A. Qualified -- I think I'm qualified to apply for any judicial position. The constitution says I'm only qualified for this position. I'm qualified for any judicial position. But at that point -- at that point, under the constitution's guideline of who's qualified for judicial positions, I was registered as a democrat, so I would have qualified for this position, although there were other positions that year that were limited to republicans that, according to the [22] Delaware constitution, I was not qualified for.

It's kind of like those old discrimination cases about whether you're in front of the bus or the back of the bus. The Delaware constitution has decided that sometimes independents are allowed in the back of the bus and sometimes they can't get on the bus.

Q. I was just asking --

A. Yes, I could have gotten the back of the bus on that one, yes.

Q. You were democrat at the time?

A. Yes.

Q. You had the qualifications --

A. At that point, yes.

Q. So you believe you had the qualifications in terms of legal skills and party for that --

A. For that opening, yes.

MR. CONNELL: Could we put that in as an exhibit?

(Adams Deposition Exhibit No. 1 was marked for identification.)

[24] MR. CONNELL: Let me mark this one in advance as the next exhibit.

(Adams Deposition Exhibit No. 2 was marked for identification.)

BY MR. CONNELL:

Q. Could you just look at the first part of that notice under "Justice of the Supreme Court of the State of Delaware"?

A. This one here?

Q. I'm sorry. This one. On Exhibit 2.

A. Okay.

Q. My only question is basically what it was before which is: You would agree that you were constitutionally qualified for that judicial position, correct?

A. Yes.

Q. That's all I've got on that one.

(Adams Deposition Exhibit No. 3 was marked for identification.)

BY MR. CONNELL:

Q. You looked it over?

A. Yes.

Q. Same question: You'd agree you were constitutionally qualified for that job?

[25] A. Yes.

Q. I think I'm almost done.

MR. FINGER: With exhibits or the entire thing?

MR. CONNELL: We're getting close to being done.

MR. FINGER: I think we can stipulate that any opening that required the democratic appointment my client was qualified for.

MR. CONNELL: Or in these cases, I suppose these were --

MR. FINGER: There's one that said either party.

BY MR. CONNELL:

Q. We would agree that you were constitutionally qualified for --

A. Yes.

MR. CONNELL: If we agree on that, I don't think we have much more to do here today.

MR. FINGER: You're running the show.

MR. CONNELL: Let me just check [26] through my notes. I think we hit all the high points here.

BY MR. CONNELL:

Q. Just to go back to the one question. You mentioned you discussed this with Joel Friedlander. Was there anybody beyond him and your attorney you discussed this with?

A. No.

MR. FINGER: Let me clarify. You mean outside of discussions with lawyers? Are you talking about just lawyers now?

MR. CONNELL: I guess I meant it to be a broader question.

BY MR. CONNELL:

Q. Outside of your family. I don't need to know that.

A. No, not that I can recall, no, actually.

Q. You can provide me with a copy of your voter registration card?

A. Yes.

MR. CONNELL: I don't have anything else.

MR. FINGER: No counter. I [27] would like to read and sign.

THE COURT REPORTER: Would you like a copy of the transcript?

MR. FINGER: Yes.

(Deposition concluded at 10:20 a.m.)

- - - - -

[28] TESTIMONY

EXHIBITS

DIRECTIONS NOT TO ANSWER	PAGE	LINE
NONE		

REQUESTS MADE FOR DOCUMENTS	PAGE	LINE
NONE		

[29] READING AND SIGNING INSTRUCTIONS

After reading the transcript of your deposition, please note any change or correction and the reason therefor on the errata sheet that appears on the following page. DO NOT MAKE ANY MARKS OR NOTATIONS ON THE TRANSCRIPT ITSELF. Please sign and date the errata sheet and return it to our office at the address indicated below. Our office will distribute copies of the executed errata sheet to all counsel. If

necessary, you can make additional copies of the errata sheet.

Rule 30(e) governing this procedure provides the deposition may be filed as transcribed if you do not return a signed errata sheet within 30 days.

RETURN ORIGINAL ERRATA SHEET TO:
Wilcox & Fetzer, Ltd.
1330 King Street, Wilmington, DE 19801
depos@wilfet.com - 302-655-0477

[30] DEPONENT: JAMES R. ADAMS
DATE: SEPTEMBER 13, 2017
CASE: ADAMS v. THE HON. JOHN CARNEY

ERRATA SHEET

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I have read the foregoing transcript of my deposition and, except for any corrections or changes noted above, I hereby subscribe to the transcript as an accurate record of the statements made by me.

Date:

Signature of Deponent

[31] CERTIFICATE OF REPORTER

State of Delaware)

New Castle County)

I, Kimberly A. Hurley, Registered Merit Reporter and Notary Public, do hereby certify that there came before me on Wednesday, September 13, 2017, the deponent herein,

JAMES R. ADAMS, who was duly sworn by me and thereafter examined by counsel for the respective parties; that the questions asked of said deponent and the answers given were taken down by me in Stenotype notes and thereafter transcribed by use of computer-aided transcription and computer printer under my direction.

I further certify that the foregoing is a true and correct transcript of the testimony given at said examination of said witness.

I further certify that I am not counsel, attorney, or relative of either party, or otherwise interested in the event of this suit.

[/s/ Kimberly A. Hurley]

Kimberly A. Hurley, RPR, RMR
Dated: September 20, 2017

[Adams Deposition Exhibit No. 1]

Connell, Ryan (DOJ)

From: doeLegal on behalf of Delaware Attorney Listsery (Courts) <notify_listservAttorneys@doelegal.com>
Sent: Wednesday, October 15, 2014 2:45 PM
To: Connell, Ryan (DOJ)
Subject: [DELAWARE COURTS] JNC Notice of Vacancy - President Judge Superior Court
Importance: High

NOTICE

The Judicial Nominating Commission gives public notice that it has received notification from the Governor that the following offices can be filled by the appointment of the Governor with the concurrence of the Senate:

President Judge of the Superior Court of the State of Delaware

(Due to the appointment of The Honorable James T. Vaughn, Jr. to the Delaware Supreme Court)

There are requirements of political balance under Art. IV, § 3 of the Delaware Constitution and, in this case, the appointee must be a member of the Democratic Party, a current Judge of the Superior Court, or both. The appointee must be a citizen of the State of Delaware and learned in the law. The position provides a current annual salary of $191,360.

Persons who meet the legal qualifications of the offices described above are invited to file with the Commission a "Questionnaire for Nominees for Judicial Office." The form may be obtained from the Commission by calling (302) 856-4235 and asking for Staci

Hammonds or can be downloaded online at http://courts.delaware.gov by going to the general information navigation tab at the top, clicking career opportunities arid then clicking on "Questionnaire for Nominees for Judicial Office" under the heading for judicial officer postings. Any person desiring to suggest candidates is invited to write to the Commission.

Completed Questionnaires must be received no later than 12 noon, November 3, 2014, at the below-listed address. Interviews of candidates will be scheduled thereafter.

Judicial Nominating Commission
The Hon. William B. Chandler, III, Chairman
Eight West Laurel Street
Georgetown, DE 19947-1424

Dated: October 10, 2014

[Adams Deposition Exhibit No. 2]

NOTICE

The Judicial Nominating Commission gives public notice that it has received notification from the Governor that the following offices can be filled by the appointment of the Governor with the concurrence of the Senate:

Justice of the Supreme Court of the State of Delaware
(Due to the retirement of
The Honorable Carolyn Berger)

There are requirements of political balance under the Delaware Constitution Art. IV § 3 and, in this case, the appointee must be a member of the Democratic Party; The appointee must be a citizen of the State of Delaware and learned in the law. The position provides a current annual salary of $ 191,860.

Commissioner of the Superior Court, New Castle County
(Due to the retirement of
The Honorable Michael P. Reynolds)

There is a requirement of political balance under 10 *Del.C. §* 511(a) and, in this case, the appointee may be a member of either party. There also are requirements that the appointee be a resident of New Castle County and duly admitted to practice before the Supreme Court of the State of Delaware. The position provides a current annual salary of $111,275.

Persons who meet the legal qualifications of the offices described above. are invited to file with the Commission a "Questionnaire for Nominees for Judicial Office." The form may be obtained from the Commission by calling (302) 856-4235 and asking for Staci Hammonds

or can be downloaded online at http://courts.delaware.gov by going to the general information navigation tab at the top, clicking career opportunities and then clicking on "Questionnaire for Nominees for Judicial Office" under the heading for judicial officer postings. Any person desiring to suggest candidates is invited to write to the Commission.

Completed Questionnaires must be received no later than 12 noon, August 27, 2014, at the below-listed address. Interviews of candidates will be scheduled thereafter. **It is anticipated that interviews for the foregoing positions will be conducted by the Judicial Nominating Commission, and by The Governor for candidates recommended by the Commission, during the week of September 8, 2014.**

Judicial Nominating Commission
William B. Chandler, III, Chairman
Eight West Laurel Street
Georgetown, DE 19947-1424

Dated: July 28, 2014

[Adams Deposition Exhibit No. 3]

Connell, Ryan (DOJ)

From: dsba-bounces@barlist.delawlist.org on behalf of Courts Listserve <courts@dsba.org>
Sent: Wednesday, April 23, 2014 2:15 PM
To: dsba@delawlist.org
Subject: [DSBA] Notice from the Judicial Nominating Commission
Attachments: ATT00001.txt

NOTICE

The judicial Nominating Commission gives public notice that it has received notification from the Governor that the following office can be filled by the appointment of the Governor with the concurrence of the Senate:

Justice of the Supreme Court of the State of Delaware

(Due to the retirement of Justice Jack B. Jacobs)

There are requirements of political balance under the Delaware Constitution Art. IV § 3 and, in this case, the appointee may be a member of either the Democratic Party or the Republican Party. The appointee must be a citizen of the State of Delaware and learned in the law. The position provides a current annual salary of $191,860.

Persons who meet the legal qualifications of the offices described above are invited to file with the Commission a "Questionnaire for Nominees for Judicial Office." The form may be obtained from the Commission by calling (302) 856-4235 and asking for Mary Ellen Greenly or can be downloaded online at http://courts.delaware.gov by going to the general information

navigation tab at the top, clicking career opportunities and then clicking on "Questionnaire for Nominees for Judicial Office" under the heading for judicial officer postings. Any person desiring to suggest candidates is invited to write to the Commission.

Completed Questionnaires must be received no later than 12 noon, May 21, 2014, at the below-listed address. Interviews of candidates will be scheduled thereafter.

Judicial Nominating Commission
William B. Chandler III, Chairman
Wilson Sonsini Goodrich & Rosati, P.C.
Eight West Laurel Street
Georgetown, DE 19947-1424

Dated: April 23, 2014

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

C.A. No. 17-00181 MPT
JURY TRIAL DEMANDED

JAMES R. ADAMS,
Plaintiff,

v.

THE HON. JOHN CARNEY,
Governor of the State of Delaware,
Defendant.

RESPONSE TO FIRST SET OF INTERROGATORIES
DIRECTED TO PLAINTIFF

Plaintiff James R. Adams ("Adams"), by and through his undersigned attorney, hereby responds to the First Set of Interrogatories Directed to Plaintiff.

INTERROGATORIES

1. Identify all documents or other items of evidence that you intend to use in this lawsuit, for any purpose, including, but not limited to cross-examination, during any pretrial or trial proceedings.

Answer:

Plaintiff objects to Interrogatory 1 on the ground that it intrudes improperly into attorney thought processes and trial strategy. *Avalon Construction-Ruidoso, LLC v. Mueller Company Inc.,* 2014 WL 12597809 at *6 (D. N.M. Jan. 3, 2014). *See also See Rosenblatt v.*

Getty Oil Co., 1982 WL 17836 at *2 (Del. Ch. Oct. 8, 1982) (not required to disclose witnesses before pretrial order). Subject to and without waiver of the foregoing objection, Adams states that he has not yet determined what evidence he intends to use in the lawsuit beyond those documents attached to or referred to in the Complaint.

2. Identify in chronological order your current and former employers, dates of employment, addresses of employers, positions, and duties and responsibilities of each position, and the amount of pay for each position.

Answer:

Delaware Department of Justice ("DOJ"), 2003-2015 (salary at DOJ started at approximately $60,000 in 2003 and ended at approximately $116,000 in 2015):

1. Family Division Deputy Division Director, 2015. Directed and managed the Family Division from a policy and procedures and personnel perspective in Kent and Sussex Counties. Represented the DOJ at court proceedings and meetings statewide.

2. Deputy State Solicitor, 2012-2014. Assistant Division Head to the State Solicitor for the Civil Division. Directed and managed the Civil Division Offices in terms of facilities as well as administration, including all personnel matters within the Division including fifty-three Deputy Attorneys General and eighteen support staff. Supervised the outside counsel program.

3. Unit Head, Juvenile Delinquency and Truancy Unit, Family Division, 2008-2012. Statewide Unit Head of the Family Division Unit that prosecuted all juvenile delinquency and truancy cases in all three counties. Supervised a staff of attorneys, paralegals,

social workers and other support staff. Represented the Attorney General and the Department of Justice on a variety of juvenile justice committees.

4. Unit Head, Child Protection Unit, Family Division, 2007-2008. Supervised the statewide unit that represented the Division of Family Services in dependency, neglect and abuse cases and child protection registry cases in Family Court. Also provided general counsel services to all divisions of the DSCYF including Child Mental Health, Youth Rehabilitative Services, and Child Care Licensing.

5. Deputy Attorney General, DNREC Brownfields Program, 2006-2007. Represented DNREC in the Brownfields Program, negotiated Brownfields Development Agreements and Voluntary Cleanup Agreements. Advised DNREC on issues related to the Hazardous Substance Cleanup Act.

6. Deputy Attorney General, Child Protection Unit, 2003-2006. Represented the Division of Family Services and litigated dependency, neglect and abuse cases and child protection registry cases through all stages of the litigation process including termination of parental rights trials and appeals to the Delaware Supreme Court.

James R. Adams, Attorney at Law, 2002-2003 (income approximately $70,000 a year). Solo practitioner. A major portion of his practice was contractual for Family Court and included representing parents in dependency, neglect and abuse cases and also in child support arrears cases.

Bankruptcy Attorney, Richards. Layton & Finger, 2000-2002 (salary started at $90,000 and ended at $115,000). As a litigation associate in Richards, Layton & Finger's Corporate Bankruptcy Department, he

drafted adversary and litigation motions, complaints, discovery requests and internal written analyses of cases.

Assistant Public Defender/Psycho Forensic Evaluator, Delaware Office of the Public Defender, 1999-2000 (salary approximately $45,000). Adams assisted attorneys in trial preparation by providing evaluations on the mental health and substance abuse treatment needs of defendants. As a Rule 55 attorney, he represented criminal defendants at bail hearings.

Chief Presentence Officer, Superior Court, 1990-1999, (beginning salary approximately $28,000 and ending salary approximately $42,000). Adams served as supervisor of the Kent County Presentence Office that provided Presentence services to both the Superior Court and the Court of Common Pleas. Adams supervised both professional and clerical staff, and provided statistical and policy reports on sentencing issues to the President Judge of Superior Court.

Pretrial Services Officer/Probation and Parole Officer, Delaware Department of Correction, 1980-1990, (beginning salary approximately $16,000 and ending salary approximately $25,000 a year). Adams was the Pretrial Officer assigned to establish the pretrial component of the Post-Arrest Processing Center. He conducted background investigations and made bail recommendations to the court. He supervised a caseload of individuals on Pretrial Supervision and also maintained a probation and parole caseload.

3. Describe your formal education from High School onward. Include the name and address of each educational institution or school, the dates of your attendance and the degree(s) awarded.

Answer:

Pitman High School, Pitman, New Jersey. Graduated 1969.

Ursinus College, Collegeville, Pennsylvania. BA, Political Science, 1979.

Delaware Law School, Wilmington, Delaware. JD, *Cum Laude,* 2000.

4. Identify in chronological order every political party affiliation you have held since your admission to the Delaware Bar, including the dates during which you held such political party affiliation.

Answer:

2000-2016 – Democrat.

2017 – Independent.

5. State the date of your admission to the Delaware Bar and the status of your license to practice law in Delaware in each subsequent year since your admission, including the dates of any change in status.

Answer:

Admitted under Rule 55 in 2000.

Admitted December 2001.

Active 2001 through February 2016.

February 2016-December 2016 – Emeritus.
January 2017-present – Active.

6. Identify in chronological order every address at which you have physically resided for a period of at least 30 consecutive days at any time since your admission to the Delaware Bar.

Answer:

465 Gum Bush Road, Townsend, Delaware 19734.

7. Identify, including applicable dates, any judicial openings to which you have applied.

Answer:

Family Court Commissioner — July 2009.

8. Identify, including applicable dates, any judicial openings to which you would have applied but did not because of your political affiliation.

Answer:

In 2017 Adams wanted to apply for Supreme Court and Superior Court openings, but as an Independent he was not permitted by the Delaware Constitution to apply for those positions.

In 2014, while registered as a Democrat, Adams wanted to apply for openings on the Supreme Court and Superior Court, but the applicants for those specific opening were required by the Delaware Constitution to be members of the Republican Party, and so he was ineligible.

9. Identify any judicial opening that you expect will become open in the next year that you are interested in applying for.

Answer:

Adams has no knowledge of what judicial positions may become open in the next year. He would seriously consider and apply for any judicial position for which he feels he is qualified.

10. Identify each court on which you believe that you are qualified to serve as a judicial officer and for

each court identified describe your qualifications for that position.

Answer:

Adams believes that he meets the minimum qualifications to apply for any judicial officer position. If allowed to apply for judicial openings he could provide detailed background on himself and his to the Judicial Nominating Commission so they could evaluate his background and determine whether his name should be submitted to the Governor for consideration, As a registered Independent, however, he is prevented from even participating in the evaluation process based on his political affiliation.

11. For each court identified in Question #8, describe how the Delaware Constitution currently inhibits your ability to apply for a judicial officer position.

Answer:

As a registered Independent Adams is constitutionally barred from applying for judicial positions on the Delaware Supreme Court, the Delaware Court of Chancery and the Delaware Superior Court. Even if he were Democrat or Republican, he would still be restricted from certain positions due to the political balance requirement of the Delaware Constitution.

AS TO OBJECTIONS ONLY:

/*s*/ David L. Finger
David L. Finger (DE Bar ID #2556)
Finger & Slanina, LLC
One Commerce Center
1201 N. Orange St., 7th floor
Wilmington, DE 19801-1186
(302) 573-2525
dfinger@delawgroup.com
Attorney for plaintiff James R. Adams

Dated: September 1, 2017

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

C.A. No. 17-00181 MPT
JURY TRIAL DEMANDED

JAMES R. ADAMS,
Plaintiff,

v.

THE HON. JOHN CARNEY,
Governor of the State of Delaware,
Defendant.

SWORN VERIFICATION OF JAMES R. ADAMS

STATE OF DELAWARE

COUNTY OF NEW CASTLE

ss.

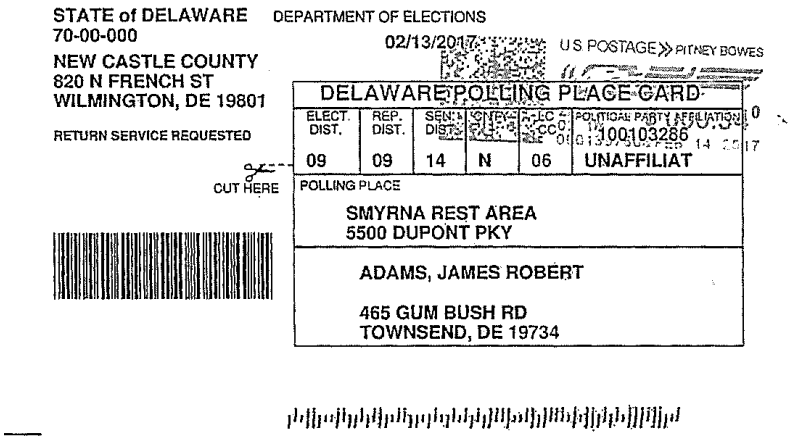
James R. Adams, duly sworn according to law, states as follows:

My name is James R. Adams. I am over twenty-one years of age and have personal knowledge of the facts stated in this affidavit. The answers to the foregoing Interrogatories are true as to my own activities, and on information and belief as to the actions of others.

[/s/ James R. Adams]
James R. Adams

SWORN TO AND SUBSCIBED BEFORE ME, a Notary Public of the State and county aforesaid of this 31st day of August, 2017.

[/s/ Jennifer L. Feaser]
Jennifer L. Feaser
Notary Public, State of Delaware
My Comission Expires September 10, 2017



STATE of DELAWARE
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68

DEBATES AND PROCEEDINGS

of the

CONSTITUTIONAL CONVENTION

of the

STATE OF DELAWARE

———

Reported by Charles G. Guyer
and Edmond C. Hardesty, Esqs.,
Stenographers to the United States
Courts and Courts of Delaware.

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Commencing December 1, 1896,
Dover, Delaware

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VOLUME II

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Published by the Supreme Court
State of Delaware

1958

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MILFORD CHRONICLE PUBLISHING COMPANY
MILFORD, DELAWARE

* * *

[940] been a long while engaged in this work. And we do want the instruction of this Committee of the Whole upon certain features which have entered into our work heretofore, and we cannot deal with that work with any sort of confidence (which work involves a great deal of labor) until we know that certain features meet the approval of the Convention. I do not think that in any aspect, or in any system which the Committee could recommend, will it be found desirable to retain the present disqualification of the resident Judge. I think it would be highly undesirable to retain that disqualification. I think if you will give us that instruction that we are to restore to him his full capacity to sit in any part of the State, that we would have a larger amount of material in the given number of men to deal with in forming the Bench.

NATHAN PRATT: Mr. Chairman, that is entirely satisfactory so far as I am concerned.

WILSON T. CAVENDER: I would say Mr. Chairman, that this Committee of the Whole owes this Standing Committee on the Judiciary many thanks for not embarrassing the Committee of the Whole by bringing in a report upon which we cannot agree. Our report was an unanimous report, so that the Committee of the Whole is not embarrassed.

JOHN BIGGS: Question on the motion.

CHAIRMAN CARLISLE: The question is on the adoption of paragraph "b" of the report.

Motion put and carried.

WILLIAM C. SPRUANCE: Mr. Chairman, I ask that the Secretary read paragraph "c" of the report.

CHAIRMAN CARLISLE: The Secretary will please read paragraph "c" of the report.

Whereupon the Secretary read paragraph "c" of the report as follows:

"Section . . . . The Judges shall be appointed by the Governor by and with the consent of three-fifths of all the Members elected to the Senate for the term of twelve years, and if a vacancy shall occur by expiration of term or otherwise at a time when the Senate shall not be in session the Governor shall within thirty days after the happening of any such vacancy convene the Senate for the purpose of confirming his appointment to the said vacancy and such other Executive business as may come before it for action."

WILLIAM C. SPRUANCE: Mr. Chairman, I move the adoption of paragraph "c" of the report.

JAMES B. GILCHRIST: I second the motion.

WILLIAM C. SPRUANCE: Mr. Chairman, this is a paragraph which has been the subject of very great and repeated consideration of the Committee. I came down here very much in favor of an elective system, and I am now in favor of it; but I found that in spite of all I could say to my associates on the Committee, I could not [941] bring them to my line of thought; and, indeed, the slight support that I had from one or two others of my colleagues fell away from me before we came to this conclusion. Whether that result was brought about by my argument, or not, I do not know.

I also came down to this Convention with another thought, and that was that while I had very decided views upon many subjects, I did not expect to have everything my way ; I did not expect everybody to agree with me; and I tried to get my mind in a frame

to yield, not only in some cases where my judgment was the other way, but where there was a decided preponderance of sentiment against me, and I hope I yielded gracefully. In other words, we all agreed that the Governor should appoint; we all agreed that it was extremely undesirable that that appointment should be as it is now, wholly upon the the Governor's will, but that there ought to be a confirmation by the Senate; that that not only was in accordance with the Federal system, but a system which prevails, I think, everywhere where the appointing power of judges is reserved to the Governor. And let me say, the number of States where the power is reserved to the Governor without confirmation, is very small.

I have not lately examined the constitutions of the different states, but I did so a number of years ago—probably about ten—and I made a tabulated list of the states wherein the judges were appointed. While I cannot now give the exact figures, my recollection is that of the whole number (and of which I think there were thirty-eight) I did not find but three or four in which the judges were not elected. But, as I say, the sentiment is against elective judges, and I haven't anything more to say about it. But in the two or three or four states where the Governor did appoint, a confirmation by the Senate was required. Sometimes that confirmation, in one or two instances, I think, is by a simple majority, but in most cases by two-thirds vote. I am told that in Philadelphia, while the judges are not appointed, without confirmation, there are a few offices in Pennsylvania which to fill do not require confirmation, and they are a few inferior appointments; but in all cases except a few inferior appointments, there is a confirmation required by the Senate, and in that state it is a two-thirds vote.

But after turning this all over, we came to the conclusion that a three-fifths vote would be a safe number to make a confirmation. As to the term of years, from the very beginning, this Committee were, I think, almost unanimous, and at the end entirely unanimous that life tenures ought to be abolished. There was some little difference of opinion as to the term of years, some thinking ten years the proper term, others twelve years, others fourteen years and others fifteen years; but after very mature deliberation the term of twelve years was settled upon, and I think it is a good safe term.

Now then, you will observe it is not contemplated that when a Judge dies or resigns there is going to be a vacancy, or somebody appointed until the next meeting of the Legislature, but there is a provision here that when a vacancy shall occur by expiration of term or otherwise at a time when the Senate shall not be in session, the Governor shall within thirty days after the happening of any such vacancy convene the Senate for the purpose of confirming his appoint[942]ment to the said vacancy. That is not convening the whole Legislature, but convening the Senate, which would be done at a very small expense; and it is very desirable. That is a desirable provision because we do not want a man appointed with the uncertainty as to whether, in his official duties, he is going to be confirmed by the Senate. Thirty days seemed to be as short a time as would be desired to make the necessary arrangements to call the Senate together, and then upon their confirmation for him to be appointed.

DAVID S. CLARK: Mr. Chairman, I have a substitute which I desire to offer for this paragraph "c", and if the Chair will permit me, I will read it.

CHAIRMAN CARLISLE: If there is no objection the gentleman will read the substitute. There being none, the gentleman may proceed.

DAVID S. CLARK: The substitute I desire to offer is as follows:

"The Judges shall be elected by the people for the term of eight years, and if any vacancy shall occur by death or otherwise, the Governor shall appoint and fill the vacancy until the next general election shall be held after the vacancy shall have occurred."

I would just state the reasons why I offered this substitute. I would not stand on eight years, but I am willing and will consent to have it amended for a less term.

CHAIRMAN CARLISLE: You offer that as an amendment?

DAVID S. CLARK: I offer this as a substitute to paragraph "c". This is a question that I have thought a great deal about, not only since we have assembled in this Convention, but I have thought about it for years. I have, for the last ten or fifteen years, been impressed with the idea that our Judiciary ought to be elected by the people. When we had the attorneys here and discussed this subject, I listened very attentively, and I found that there was quite a diversity of opinion along that line, some of them thinking that the Judges ought to be elected, and others thinking that they ought to be appointed.

I have consulted a good many of my constituents in regard to this matter, of all parties, my Democratic friends, my Republican friends, and my Prohibition friends, and so far as I have been able to learn, a majority of them felt that they would like for the Judges to

be elected by the people. I do not see why they could not be; I do not see why we could not elect them by the people. Some say that it will be too much in politics to have them elected by the people. I cannot see why that should be so. I cannot see for the life of my why we should think that that would interfer with their election. I see there is one part of this paragraph, and that is in reference to "thirty days" the Senate shall be assembled by the Governor—shall be called together—to sanction the appointment that he may make.

Now, it seems to me that that would be unnecessary. Of course, it would not be, if this paragraph was adopted; that is, it would not be unnecessary. But it merely seems to me that if we could have an [943] opportunity to elect our judges—and it was grafted in our Constitution that the Judiciary should be elected—it would, in every respect, be more satisfactory to the people.

I therefore offer that as a substitute and move its adoption.

WILLIAM T. SMITHERS: I second the motion.

EDWARD G. BRADFORD: I would ask that the proposed substitute be again read.

CHAIRMAN CARLISLE: The Secretary will read the proposed substitute.

Whereupon the proposed substitute was read by the Secretary as follows:

"The Judges shall be elected by the people for a term of eight years, and if any vacancy shall occur by death or otherwise, the Governor shall appoint and fill the vacancy until the next general election shall be held after the vacancy shall have occurred."

DAVID S. CLARK: I would amend that substitute by making it "ten years", instead of "eight years".

WILLIAM C. SPRUANCE: Mr. Chairman, although that amendment is not exactly what I would like to have, it does embody the main idea of elective Judges by the people. I feel constrained to vote for that amendment just on that ground, and no other. My own idea, would be—of course, I am not pressing this thing upon the Convention, but it is merely to explain my position—and has always been that we should elect our Judges by the people of the State, and the people of the State at large, and that when we had ascertained the number of Judges that we were to have, if there were more than one to be elected, that there should be a limitation of number which a man could vote for, which would inevitably secure a non partisan Bench; if there were five, that no man should vote for more than three; if there were four, that no man should vote for more than two; if there were three, that no man should vote for more than two; if there were two, that no man should vote for more than one; and of course, if there were one elected, a man could vote as he pleased.

That has always been—I won't say always, but that is my judgment about how Judges ought to be chosen. While this amendment does not embody all that, it does put distinctly before the Convention the question, whether or not we will have the Judges elected or appointed. Although I signed this report, still, as in the case of all these reports, I understand that every Member is at liberty to modify his view according to his judgment without any charge of inconsistency. I say that I shall vote for this amendment just upon that idea, that it is a proposition to elect the Judges by the people, although it is not accompanied with that qualification which I think it ought to have.

WOODBURN MARTIN: Mr. Chairman, I am unalterably opposed to an elective Judiciary. This matter was discussed in our Committee very thoroughly, and I think when we took a vote it stood six to two, if I am not mistaken, for an appointive Judiciary.

WILLIAM C. SPRUANCE: It was stronger than that, I think.

[944] WOODBURN MARTIN: Was it stronger than that? Well, that was strong enough. There are many things in this State that make an appointive Judiciary desirable. In the first place, we have such a condition of affairs here that exist probably no where else in the Union. We are a small State, next to the smallest. We have numbers of offices to fill which consequently must take numbers of politicians. If we had an elective Judiciary would the people single out the best man to be elected Judge, or would the office of Judge be filled as other offices are now filled? I myself believe that the man who would be elected Judge would be the man who had the greatest pull politically, the man who had the most influence with a certain class of people at the primaries, the man who would succeed in first getting the nomination, not on account of personal worth, but on account of personal influence that he might exert, and when he did get the nomination for this office, he would call upon his party to support him on party lines and they would do it, and they would elect him, no matter if he was incompetent, no matter if he was unfit for the office.

Our Judiciary is a most important thing, and we ought to keep it as clean and as pure as it is possible to do. We ought to put our Judges under obligations to none, if we can help it, for advancement in any way. There is no man in this State elected to office who is not under obligations to some people for his nomina-

tion and for his election. There is no man in this State whom you could run for Judge on the ticket of any party unless he would be under obligations to some people, first for his nomination, then again for his election.

We must remember also that Judges are human, that Judges have feelings like all the rest of us. They have their likes, and they have their prejudices, and we must take that into consideration in discussing these matters. A man who has fought another man for a place, done all he could to defeat him, would not stand as well with that man as someone else who had done all he could to advance him and to build him up. A man could not help but feel more kindly towards the one than towards the other.

Now, we want in this State the best Judiciary that we can get. We want to keep up to the highest point the standard of our Courts of Justice, and in order to do that we must provide such a provision as we believe will bring that about. First, the Governor of this State would not dare, I do not believe, if this section were adopted, to appoint a man from personal preference. He would be compelled to be guided by the man's fitness for the place, because the appointment must have the concurrence of three-fifths of the Senate, and no matter of what political complexion that Senate may be, the appointment must be concurred in by three-fifths of the Senate.

Further than that, there is an idea which I suggested from the beginning, and that is that that concurrence was not to be deferred until the next regular session of the. Senate when a man who was appointed could get eminent lawyers to prepare his opinions, when he could give entire satisfaction in the discharge of his duties as Judge, when he could build up a coterie of

friends around him to pass upon his confirmation, but the Senate was to pass upon this appointment within thirty days after it was made, so that it would [945] pass upon the man's personal worth and merit, and if he was a man who had made a sufficient reputation in the practice of his profession at the bar of this State, the Senate would confirm his appointment. If he was not a man of that character, if he was not a man of that ability, they would not concur in the appointment, but the Governor would be compelled to submit some one else to them for their concurrence.

It seems to me to be the most wise and the most safe provision, and it seems to me that it is all that would be desirable. We must take into consideration that the Governor is the representative of the people in these things and it is really the people through their Governor who appoint this Judiciary, and especially where the concurrence of the Senate is necessary; it is the people all the way through, and neither one nor the other can be arbitrary, for it is their will, the will of the people who elect these men; they are servants, and occupy these positions for this purpose among other duties. It is put in their discretion; to a certain extent, in their hands. We all know that in the case of elective offices there are some men who are elected to positions, even in our own party—there are some men sent to this Legislature here (a most important and responsible place), men of our own party, whom we do not think ought to go there. How much worse it would be to put a man on the Bench for eight or ten years, a man whose skirts might have been smirched with politics, and that the people would have to live under? I hope it will not be done. I hope that the office of Judge will be an appointive office, that we may get the best men possible, and surround them or their appointments with such safeguards as will make it most probable

that he or they will make the best servant or servants. Hence I am opposed to the substitute.

EDWARD G. BRADFORD: Mr. Chairman, I desire to submit a very few remarks by way of explanation of the vote which I shall cast upon the question now before this body. I conceive that what we all desire is a Judiciary composed of able and upright Judges. Were the alternative presented to me of having our Judiciary elected by the people on the one side, and appointed by the Governor without any confirmation by the Senate on the other, I should prefer the former, a position that I have always taken, that as between the act of the Governor alone without regard to any requisite requirement of confirmation by the Senate, I should trust the people as against the Governor. I know there is peril in it. I know that the people do not always choose the best officers, and I know that the Governor does not always appoint the best officers. We have had most worthy Governors, and we have had very unworthy Governors, and so far as political influence is concerned, it may operate quite as strongly, if not, indeed, more strongly upon an unworthy Governor who was under certainly very great political obligations to those who have secured his nomination and election.

But the redeeming feature of this report, in my judgment, is that it requires the consent of three-fifths of the Senate.

Now, that to me, is a very great safeguard, and I agree with the gentleman from Seaford (Mr. Martin) when he says that with that Constitutional provision staring a Governor in the face he would be very careful in his selection of members of the Judiciary. He would [946] know that these men would have to run the gauntlet of three-fifths of the total membership of the

Senate, and I believe taking the bald proposition of an election by the people on one side and the appointment by the Governor by and with the advice and consent of three-fifths of all the Members elected to the Senate, that the latter course would be the safer of the two. We are after, as I said before, pure men, upright men and learned men. We cannot afford to do with less.

And with the understanding on my part at least that in the case of an appointment by the Governor it shall be with the advice and consent of three-fifths of the Senate, I feel compelled to vote against the substitute offered.

CHARLES F. RICHARDS: Mr. Chairman, I simply want to say that this question of an elective Judiciary is one that I have given, or at least have endeavored to give very careful consideration, not only since I have been a Member of this Convention, but for some years I have considered the question very seriously. I was frequently thrown in contact with one of the best and ablest lawyers of our State who was a great personal friend of mine. I refer to the late Chief Justice Robinson, who was a strong advocate of the elective Judiciary system, and in the frequent conversations between Judge Robinson and myself, my mind was often called to this question, and I have considered it, thought over it and endeavored to observe the workings of the elective Judiciary system in other parts of the country.

I occupy the same position as the learned gentleman from Christiana Hundred (Mr. Bradford) and I apprehend that it is the earnest desire and purpose of each and every Member of this Convention, in this as well as in other work that devolves upon us, to do simply that which will be best for the interest of all concerned.

Now, I have looked at this question very largely in this light: It has occurred to me, whether it is possible, at all times in an elective system, to keep the question of politics out of the Judiciary. Observing the working of the system in other parts of the country, in other states, whilst we have heard the statement of the gentleman (Mr. Spruance) as regards Pennsylvania, who advocates the system of the State of Pennsylvania, and who, I think, in his statement here said that it gave entire satisfaction, yet, Mr. Chairman, it is a fact that in some parts of Pennsylvania they have had only recently very great trouble, and the system has as it were, brought upon the Judiciary very great—I will not say annoyance, nor exactly shame—but it really has not, in any sense of the word, been at all creditable.

In Delaware County many of us know, and in one of the districts of Pennsylvania, which includes, I think, Cumberland, York and Adams Counties, there has been great trouble in regard to the election of the Judiciary. Only in 1895, I think, there was trouble. In Maryland, there are some people who seem to be entirely satisfied with the system in vogue there. Still, many of the members of the Bar of the State of Maryland say to me today, "Don't adopt the elective Judiciary system." I can refer to a member of the Snow Hill Bar, Mr. Purnell, whom I met only a few days ago on the train, when I had a conversation with him in regard to the subject, and that was [947] his opinion, that the elective system was not giving satisfaction in Maryland. Only a few years ago there a Convention was held for the purpose of nominating an Associate Judge in I think, the Fifth Judicial District, and over fifteen hundred ballots were required to make that selection.

Now, that simply means the engendering of political feeling, the creation of that kind of political feeling which follows a successful man on the Bench and which leaves its mark upon the defeated man. It has been said that it works in Pennsylvania, that there has been no trouble in Philadelphia with the elective Judiciary, and yet, Mr. Chairman, there is a difference of opinion on that. Philadelphia lawyers say to us, "Don't you adopt the elective system." They say that a recent appointment following a vacancy on the Bench in Philadelphia was the selection of a very able lawyer, but a lawyer selected by reason of his political activity and his political influence, and that no other man could have been selected; and that whilst good men are frequently selected, in this selection, this gentleman said to me, "He is a good lawyer; a man well equipped for the position"; but when those men are put there, the political influence that follows them afterwards, takes from them what you might term the real eminent position as a lawyer and compels them to go into politics in order to retain their position and bring about their re-election.

Mr. Chairman, I opposed this when it was before the Committee, and I oppose it now. With the protection that this report throws around the appointment, that is, the requiring of three-fifths of the State Senate, we have a safeguard which will prevent the Governor, if the Governor is disposed, if the Chief Executive of the State is disposed to carry out his own views, to appoint a personal friend, or some one to the position who is not fit for it; here is the guard which will prevent such doings and which will protect the Judiciary of the people of the State.

So that as the gentleman from Seaford (Mr. Martin) has said, the people also have indirectly a voice, and a

voice which can be expressed without bringing out that bad feeling that a political fight necessarily engenders. We want a good Judiciary. We want to fill the position with men who are in every way capable of filling it, and who are in every way suitable to do the great and the exalted duties that devolve upon Judges.

It does occur to me that this report places us in a position where we may secure just such an appointment, and if left to the people, then we are running the gauntlet of the people voting through and being actuated by political motives and personal prejudices alone. For that reason, Mr. Chairman, I shall vote against this substitute.

JOHN BIGGS: Mr. Chairman, this is a question worthy of very careful consideration, because I consider it a very important one. It is a question that was debated at length in the Convention of 1852 and has been much talked of by our people since that time up to the present. I shall vote against this substitute because I think it would be very unwise that our Judges should be mixed up, I will say, in politics. We can obtain good men in this way, by the confirmation by the Senate, without those men being under political obligations, such as are engendered at primaries and at general elections.

[948] And there are reasons, it occurs to me, why the Judges should not be elected that perhaps do not apply to any other officers. For atfer all, Judges are but human. Whoever sits upon the Bench to pass upon the rights of yours as to your liberty and your property ought certainly to be as free from all influence and bias, political and otherwise, as it is possible to throw around that man.

I do not see how Judges can be elected without being more or less under political influences. It may be said that they need not take part in these elections, but, Mr. Chairman, if they do not, either by themselves or through their friends, the probabilities are that some less desirable man would be elected; that is, some one who would control the primaries and would control the election. So that I cannot see what is to be gained by electing the Judiciary. But, on the other hand, it seems to me that there is a great deal of risk to be run by it. I am told by people who have lived in states where they do elect judges that it is often attended with very bad and very undesirable effects. We have certainly seen some of it within our sister State of Maryland, for men might recollect within the past few years there was a contest between two men in Cecil County for the office of Judge there. That was certainly a very undesirable thing for those men to be engaged in, one of whom was to pass impartially upon the rights of their fellow men.

Therefore, Mr. Chairman, I shall vote against the substitute as offered to elect these Judges, believing as I do that the appointment by the Governor, to be confirmed by the Senate has a protection thrown around it by having this three-fifths vote. That does not apply to a great many other states, I believe; it is not the rule in the United States Senate, for there I believe a majority of the Senate confirms an appointment made by the President. Here, more is required, so that there is an extraordinary protection; that is to say, a protection beyond a majority in this case in order to secure desirable men.

ROBERT W. DASEY: Mr. Chairman, I only want to say one or two words in regard to this subject, although, probably, it is not necessary for me to say anything. When the idea of changing our Judicial system was

first brought about, many of our people were desirous of changing the whole system, that is, that all officers should be elected by the people. But, Sir, it has occurred to me that this matter may be nicely fitted to a story I once heard concerning an old lady in the State of New York who had a deposit in one of the banks there. There was a report sent out by one of the morning papers that the bank was about to close. The old lady went to the bank with her deposit book and rushed in to the paying teller and said, "I have some money on deposit here, I believe"? The paying teller replied, "Yes". The old lady then said, "Can I get it? I see the bank is about to break."

The paying teller said, "Yes; you can have your money if you have your bank book with you." She says, "Can I get it?" The paying teller said again, "Yes." "Well," she says, "if I can get it, I don't want it. If I can't get it, I want it." A number of those people who were desirous of having a change made in the Judiciary system, and people belonging to both parties, a short time ago notified me by letter, and a number called upon me and expressed their opinion in [949] my presence, which opinions they thought might have some effect, that they doubted the propriety of electing the Judiciary in this State. Since there has been talk of confirmation by the Senate, I do not believe you will find very many who do not think that is the best principle; that is, for the Governor to appoint and for such appointment to be confirmed by the Senate. We have very recently been told by some very prominent men that that principle is the best one of all.

JOSHUA A. ELLEGOOD: Mr. Chairman, I did not intend to say a single word in regard to the subject under discussion, but when I took my seat in this Convention I was deeply impressed with the idea that to

elect the Judiciary was the right thing to do, and strange to say I am of that opinion still, and that, notwithstanding all I have heard to the contrary. I have listened with a great deal of interest to the arguments in favor of an appointive Judiciary, and yet I have not heard a case cited in any state. I believe it was argued here that in a majority of the states there was an elective judiciary. I have not heard a case cited where they have abandoned the elective system and substituted the appointive system in its stead. If it has so many evils attached to it in those states where the system is an elective one, it seems to me that the people would rise up in a body and abolish that system.

I see nothing in the system of elective judiciary in the City of Philadelphia that should be a bugaboo to us. We find in Philadelphia, although a Republican stronghold, that a Democrat was elevated to the Bench there by from twenty to thirty thousand majority of Republican votes. And they still hold him in that position. Why? For the simple reason that he has been weighed in the balance and not found wanting.

JOHN BIGGS: They divide the Judicial appointments up there. That is to say, they agree the Democrats shall have so many and the Republicans shall have so many so as to keep them out of politics.

JOSHUA A. ELLEGOOD: There is no law to that effect. But I will say right here that if that man, be he Democrat or Republican, did not prove himself to be an honorable upright judge, the people would relegate him to private life in short order.

The people that I more directly represent than I do others perhaps, or to whom I look for advice and counsel in these matters, have said to me, "we want an elective Judiciary, and we want a clause inserted in that

Constitution for that purpose." Therefore I shall cast my vote accordingly.

Now it is said that the Governor of this State is better calculated. to appoint a Judge than the people themselves. Who is the Governor? He is a servant of the people, made so by the vote of the very people who would elect the Judges to the Bench; and yet you say this one man, a representative of all the people, is better calculated to know what the people want than they would themselves. On the other hand, you say that we throw a safeguard around this by the fact that the Senate of the State of Delaware shall confirm the appointment made by the Governor by a three-fifths majority. Suppose the Governor is a Democrat and the Senate is Republican! [950] Why, they lock horns at once on the appointment. If such a state of things should exist, there is no doubt but that you will lock horns right at once, and instead of bringing about a state of affairs that is more wholesome, you simply produce in the State of Delaware a condition of things that I never want to see exist.

I believe in throwing the responsibility directly upon the people, and if they by their votes elect a man to the Bench who is not calculated or fitted to sit there, or who is not an honor to the seat, then you cannot point your finger at the Governor and say, "you are the man who did this!", but you point your finger at the people and say, "This is your doings, and you must suffer the consequences."

This elective Judiciary system has been talked about for years and years, and there is not a gentleman in this Convention but what has heard the appointive power condemned to the fullest degree for the simple reason that the Judges that have been appointed by

the Governors of this State have not measured up to the requirements demanded by the People of the State.

So, in conclusion, I shall vote for the substitute offered by the gentleman from Kenton Hundred (Mr. Clark). But still, I do not believe that the substitute entirely covers the ground, because I do not believe it goes far enough; it is not far reaching enough. Perhaps the phraseology does not explain just what we want in that section; yet it is a step in the right direction, and I shall vote for the substitute cheerfully.

EDWARD G. BRADFORD: I would like to ask the gentleman (Mr. Ellegood) just one question, and that is, whether he has known of any instance, and if so, what it was, or how many instances in which the President being of one political faith and the Senate being of another political faith and where there has been any rejection of the Presidential appointee upon political grounds?

JOSHUA A. ELLEGOOD: That is in the United States, and is governed by the United States Senate; but I can cite you hundreds of cases where a single Senate will hold up an appointment; and if I understand rightly, there is a batch now of one hundred appointments which have been made by President Cleveland and which are being held up in the Senate for the incoming administration.

WOODBURN MARTIN: Of the Judiciary?

JOSHUA A. ELLEGOOD: I do not say in the Judiciary. We are talking about the appointive power.

WILSON T. CAVENDER: Mr. Chairman, I do not rise to prolong this debate. I presume the Committee of the Whole is prepared and ready to vote upon this question; but as a Member of the Standing Committee

which made this report, I wish to say that I have contemplated this proposition of dragging our Judiciary into the mire of politics with a great deal of dread. I do not suppose that it is necessary for anyone to discuss at all the fact of whether or no the making of our Judiciary elective would have a tendency to drag them into the mire of politics. As has been said here the men who are running for the position of Judge, no matter to which party they may [951] belong, are very much alike anyhow, and if I had had any doubt in my mind about this, I should have had all doubt removed by an observation of a publication what I saw but a little while ago.

In some of our states you know there is a law requiring nominees of parties to state under oath their contributions to the political party to which they belong, and I remember very distinctly of seeing, in the State of New York, that one of the judges had been assessed for political purposes, when he was nominated, to the amount of twenty thousand dollars. It was simply horrifying to me to think that a man, a nominee of a party, to fill such a position as that of a judge, should be assessed to that extent. Therefore I say, if I had entertained any doubt previous to that, that removes all doubt in my mind.

I shall therefore vote in accordance with the proposition reported by this Committee, and shall do so most heartily.

EDWARD D. HEARNE: Mr. Chairman, I was surprised at the statement made by the gentleman from Cedar Creek, (Mr. Ellegood) to the effect that the people in his section of the county were so clamorous for an elective Judiciary. I tell you the truth when I say that the gentleman from Cedar Creek (Mr. Ellegood) is the only man that I have met in Sussex County since the

assembling of this Convention that is favorable to an elective Judiciary, and the first man I have heard speak of it on that line.

Mr. Chairman, the report of the Committee has made two or three wide strides along the line of liberality over and what is provided by our present Constitution, for, under our present Constitution, our Judiciary are appointed by the Governor for life. His will is supreme and conclusive in the appointment. We have no appeal from it; none whatever. This Committee being of a liberal turn of mind have gone to the extent of appointing for a limited number of years, for twelve years, and they do not stop there; but they go still further and say that the appointment shall be confirmed by the Senate in special session. All of that is a wide stride in the direction of liberality—a very wide stride.

I can conceive that in the first instance, under our first Constitution which made the Judiciary appointive for life, that those gentlemen were controlled by the sole desire in making Judges appointive of removing the Judiciary out of the mire of politics. I can conceive of no other reason. And I for one favor keeping it safe and out of politics as far as possible, and, at the same time, with as great liberality to the wishes of the people as is consistent with the object desired to be attained.

I shall therefore vote against the proposed amendment of the gentleman from Kenton Hundred (Mr. Clark).

WILLIAM C. SPRUANCE: Mr. Chairman, I do not rise to continue this debate. I could make, I want to say, a pretty good speech in favor of this amendment, and although it may not be quite as good a speech as

my friend from Cedar Creek (Mr. Ellegood) has made upon this subject, I could make a pretty long speech in its favor; but I am not going to inflict that upon you. What I rise for is just simply to say that since this amendment was offered I have [952] been able to lay my hands upon the memoranda I made of the examination of the Constitutions of the different states upon this subject, which examination I made just ten years ago, in 1887; and I tabulated the different states in respect to that question. I will only read you a summary.

There were then thirty-eight states whose constitutions I examined, and I found that the judges were elected by the people in twenty-six states, that they were appointed by the Governor and confirmed by the Senate, or Executive Council (for in some states they have Executive Councils) in seven states, and they were chosen by the legislature in four states; and they were appointed by the Governor alone in but one State, and that was in the State of Delaware.

JOSHUA A. ELLEGOOD: Can you state a case where they went from an elective back to an appointive system?

WILLIAM C. SPRUANCE: Not a one. I never heard of such a thing; and although it is rather unsafe for a man to talk about what he cannot prove by facts, I venture to say that of the seven states, since they have been admitted to the Union, five have changed over, and upon examination you will find every one of them have got their judges elective; and the probability is that those states in which they have held Conventions within the last ten years since I made that examination, have adopted the elective system; you will find that some of them, at least, have adopted that system. But

I never heard of a State that went from an elective system to any other.

I am not going to protract this debate. Of course, there is more or less difference of testimony as to how this thing has worked in other states. But I plant myself upon this: I do not believe it is true that the system of an elective Judiciary has worked badly in other states because of the universality and the persistency with which they have held onto that system. Then again while I know there are some people from the state where they have an elective judiciary who are a little sore upon the subject, yet a majority of the most capable gentlemen that I have been thrown in contact with from other states, their testimony is overwhelmingly in favor of an elective judiciary. And, that, so far as my knowledge of the adjoining states is concerned it is not very extensive or very active, but so far as it goes, the tendency all is in favor of the elective system.

There has been some allusion made to Pennsylvania, as to how the elective system operates there. We heard that venerable gentleman who came down here the other day to instruct us—and I will say he came down here under absolutely proper circumstances, at our invitation, and I do not know where we could have found a man of larger experience and who was more absolutely disinterested in the subject for he is not engaged in the practice of law even now, his life of activity having passed, but he is a man of large experience (and he occupied a position in the Constitutional Convention of Pennsylvania), and a man of very large experience in public life; and I do not know anybody whom I would ask with more confidence for a correct answer as to the working of the system in Pennsylvania than him, and you know what his testimony is in regard to it. We [953] do know of some instances in Pennsylvania in

which this thing has worked well. Gentlemen talk about the experience in Delaware County, Pennsylvania. Let me say I know something about that man who is Judge there, and he is no slouch. He is a man who practiced law for many years in Philadelphia with great success. I won't allude to the weaknesses and defects, for there are some in his character ; but he is an honorable man, and he belongs to an honorable family, and has three or four brothers who are in different occupations in different states, and who have held their positions by the very force and strength of their character; and there are one or two of his brothers who are living to this day. He made and held a large practice in the City of Philadelphia. Then he moved to Delaware County. He is an honorable man and an exceedingly able man. He is supposed to have for his friends certain classes in the community that some do not approve; for instance, the gentlemen who addressed us yesterday afternoon (local option people) do not approve of them. He has more friends, probably, among the liquor people than among the prohibition people. Notwithstanding that, he has very strong support and backing in that community which is a highly moral community; and notwithstanding what may be said against him, he receives the support of the majority of the people of that Judicial District, and I am not prepared to say that he is one unworthy of it either. He is, at least, a man who had the ability to make and hold a large practice at the bar, and we have known some men who have been appointed to the position of judge who have not had that capacity. I think I have said all I have got to say upon that subject.

I will say just one other thing. There was a very remarkable instance of the operation of the elective system in Philadelphia some years ago. There was a

judge upon the bench, and a Republican judge, in this greatly Republican State of Pennsylvania, and in the City of Philadelphia, who was an honest man, who was an able man, and who was a learned lawyer, but he was so uncomfortable and cantankerous that he made himself a nuisance to the bar and they determined that they would rid themselves of him, and when the time for nomination came around—but first of all, just before that there was a vacancy on the bench in Philadelphia, and the Governor, at the present time, who is a Democrat, appointed a young lawyer named Gordon to fill this vacancy. He proved himself very capable in the few months that elapsed before the time for nomination and election to fill this position came around.

This Republican judge was put in nomination by his party, and the lawyers in Philadelphia, irrespective of party, to the number of about, as I recollect, three hundred and fifty, signed what the sailors would call a "round robin", in which they protested against the election of that man as a judge; and they went in and they elected Gordon, and Gordon has been a judge ever since, and he has proved perfectly acceptable to the people of Philadelphia.

The trouble is that where the people do not stand out for a good, strong pure minded man, regardless of party, then election by the people is a dangerous thing; I mean, where the bar has not got the moral strength to stand for such a man, regardless of party, it is a dangerous thing, because the people naturally look to the bar for help, [954] to a certain extent (and very properly), upon that subject. If our Bar are such a set of men that they will not stand for good Judges irrespective of parties, then God save you if you have an elective system. But if they would prove themselves

to have as much courage as the lawyers of Philadelphia had, then I do not think there is any danger but what you would get good results from it.

I never would consent to give my support in nomination to any man in any party whom I did not think was morally and intellectually qualified for the Bench, and I would have a number of others of my associates who would not entertain such an opinion. All it needs is a little nerve and courage at the right time, and every member at the Bar would have a proper influence in this matter.

DAVID S. CLARK: Mr. Chairman, I just want to say one word. There has been much stress laid upon the bugaboo of dragging the Courts into the mire of politics. I would like to ask if the election of the Judges could possibly drag our Courts deeper into the mire of politics than they are now.

WILSON T. CAVENDER: Yes; it could.

WILLIAM T. SMITHERS: Mr. Chairman, is it not a well known fact that in a recent case, and in all recent cases of that kind, our Courts have been absolutely partisan? Now, can the elective system drag them any deeper in the mire of politics than they have been dragged in under this appointive system? As a matter of fact, the elective system has worked well in other states, no matter what has been said to the contrary.

I have had myself some little experience with that system and have associated in the past years with lawyers who have practiced for years under that system, and so far as I know every man has commended it. I am safe in. saying as regards the city of Philadelphia, and I think also as regards the State of Pennsylvania, that no member of the Bar there would think for a moment of returning to the other system.

I am in favor of this amendment, and have been in favor of it all the time; and the people I have talked with, whom I count as my constituents, have said to me, "this is what we want." I believe it to be what we want. My idea is that we can trust the people. If you will place the responsibility upon them and they come to recognize it as a responsibility, I believe they will not go far wrong.

I shall therefore vote for this amendment.

DAVID S. CLARK: Mr. Chairman, I am very much interested in this matter, and I want to say right here that we would like to have our Judiciary elected by the people; not by any particular party, but by the whole of the people. If the Governor appoints, and three-fifths of the Senate is of the same political faith as the Governor is, then we have a Judge, whoever he may be, appointed by one party and the other party or parties as the case may be, in which appointment the people at large have no opportunity of saying who their Judge shall be.

Now, it has been said that the great object of having the Judiciary appointive was to keep it out of politics. I am frank to confess that I knew nothing about politics until about eight or ten years ago. I [955] always went to the polls and voted and attended to my own business at home; but after I was elected to the Legislature and being thrown in company with politicians I somewhat imbibed the political spirit and then naturally looked after the political interests. I want to say here (and I believe I say it truthfully) that I do not believe there is a gentleman on this floor, whatever his political faith may be, but what would agree with what I say, that in our present system of appointive Judiciary, as it has been, there has been entirely too much politics mixed with it. If there is a gentleman here who

believes to the contrary, let him stand up and I will sit down.

EZEKIEL W. COOPER: How do you mean? Mr. Chairman, I would like to understand what he means, and I stand up simply in defense of the State of Delaware if the gentlemen means what I construe his meaning to be.

DAVID S. CLARK: The gentleman can stand up in defense of the Judiciary, and defend it, of course, but I ask if he thinks it has been as pure as it ought to be? The question I put is this: If we have had in the last ten years a Judiciary that has been clean of politics, or political trickeries? If there is a gentleman here who believes that, let him stand upon his feet.

The following gentlemen then stood up: Messrs. Cooper, Dasey, Pratt, Cavender, Martin, Hearne, Horsey, Richards, Burris, Coach and others.

WILSON T. CAVENDER: Now as we have stood up, let the gentleman make his promise good by sitting down.

DAVID S. CLARK: Six years ago I was called to Wilmington where there was an election ease to be tried. After I got up there a gentleman remarked to me, "How do you think this case will go?" I says, "Why, it will go on one side, just like the handle of a jug." He says, "Why do you think that?" I says, "It is not necessary for me to explain to you why I think that; I judge from past experience." And so it did go, just as I predicted. And there are other cases that have come before our Courts, and the decisions of those Courts in those cases have not been clear of politics. There is no question about that.

So I say, Mr. Chairman, give us an elective Judiciary. It is said that a wise man changes his mind but a fool never. I feel pretty sure that we have quite a number of wise gentlemen on the floor of this Convention. I also know that when we have once publicly expressed our opinion, why it is hard for us to get away from it, harder than it is if we had not expressed such opinion. There are quite a number of gentlemen here who have not expressed an opinion in regard to this question of elective Judiciary.

I move, Sir, that those gentlemen have time to consider this matter before this vote is taken, and that we now rise, report progress and ask leave to sit again.

ROBERT W. DASEY: I second the motion.

JOHN BIGGS: Mr. Chairman, we certainly must make some progress in these matters. We have talked on this one question all morning, and I hope the Members are ready to vote on it.

[956] WILSON T. CAVENDER: I call for the yeas and nays.

WILLIAM SAULSBURY: Mr. Chairman, before the question is put, I would like to say just one word. On general principles I believe that is in the line of right policy of entrusting to the people the direct choice of their public servants. I recognize that under certain conditions that we now have the election of a Judiciary possibly might not be desirable. I have not the grave fears of results from an elective Judiciary that a great many Members of the Convention seem to have. I confess that I feel some doubt as to the practical working of the provision reported from the Committee requiring a confirmation by three-fifths of the Senate. I am not clear in the opinion that it is well to mix the State

Senate up with appointments, or that much good would come from that provision.

I will say, however, on the question that is about to be voted on now, I do not feel clear on the proposition; but if a vote is taken now, I, under the circumstances, shall vote to sustain the report made from the Committee, of course, reserving the right to change my opinion if any question comes up later in Convention.

JOHN BIGGS: Question on the motion.

CHAIRMAN CARLISLE: The question is on the motion that the Committee rise, report progress, and ask leave to sit again.

The Secretary will please call the roll.

Whereupon the Secretary called the roll with the following result:

Yeas: Messrs. Cannon, Clark, Ellegood, Saulsbury and Smithers.

Nays: Messrs. Bradford, Biggs, Burris, Carlisle, Cavender, Cooper, Dasey, Donahoe, Gilchrist, Hearne, Horsey, Martin, Moore, Pratt, Richards, Sapp, Spruance and Wright.

Absent: Messrs. Cooch, Evans, Harman, Hering, Johnson, Murray and Orr.

Whereupon the Chair announced the result of the vote as follows:

Yeas, 5; Nays, 18. And declared the motion lost.

WOODBURN MARTIN: I call for the yeas and nays on the substitute as offered.

CHAIRMAN CARLISLE: The question before the Committee is the adoption of the substitute offered by

the gentleman from Kenton Hundred (Mr. Clark) in lieu of the section as originally reported.

The Secretary will please call the roll.

Whereupon the Secretary called the roll with the following result.

Yeas: Messrs. Cannon, Carlisle, Clark, Ellegood, Gilchrist, Smithers, and Spruance.

Nays: Messrs. Bradford, Biggs, Burris, Cavender, Cooper, Dasey, Donahoe, Hearne, Horsey, Martin, Moore, Pratt, Richards, Saulsbury, Sapp and Wright.

[957] Absent: Messrs. Cooch, Evans, Harman, Hering, Johnson, Murray and Orr.

Whereupon the Chair announced the result of the vote as follows:

Yeas, 7; Nays, 16. And declared the motion lost.

EDWARD G. BRADFORD: Mr. Chairman, I would move to amend section "c" between the word "years" and the word "and" in the fifth line of the newspaper copy, the words, "if they so long behave themselves well".

WILLIAM SAULSBURY: I second the motion.

EDWARD G. BRADFORD: So that the sentence down to that point would read, "the Judges shall be appointed by the Governor by and with the consent of three-fifths of all the Members elected to the Senate, for the term of twelve years if they so long behave themselves well." This statement is found in nearly every Constitution that you can lay your hand on. It is simply to guard against an unfit man continuing in office; that is to say, that they are to continue and hold office for a term of twelve years if they so long behave themselves well.

JOHN BIGGS: Question on the motion. Motion put and carried.

CHAIRMAN CARLISLE: The amendment as offered by Mr. Bradford is therefore adopted.

JOSHUA A. ELLEGOOD: Mr. Chairman, I move to amend paragraph "c" by striking out in the fifth line the word "twelve" and inserting in lieu thereof the word "ten".

WILLIAM A. CANNON: I second the motion.

WOODBURN MARTIN: Mr. Chairman, I move that the Committee do now rise, report progress, and ask leave to sit again.

Here is an amendment offered to reduce this term of years from twelve to ten. Every Member of our Committee knows what a hard time we had to get it down to twelve years, and now an attempt is made to cut it down to ten years.

I will withdraw my motion for the Committee to rise.

JOSHUA A. ELLEGOOD: Mr. Chairman, I will withdraw my amendment for the present if you are not going to adopt the section now.

ROBERT W. DASEY: I think it is very desirable to continue with this matter now. This question is under way, and the Judicial stream is pretty well crossed, and if we are not very careful, we will lose steerage way, fall back and lose what we have already gained, and the first thing we know we will be on the shoals.

WOODBURN MARTIN: Mr. Chairman, I withdrew my motion.

WILLIAM C. SPRUANCE: I call for the question on the section as amended. I will ask the Secretary to read the section as amended.

[958] CHAIRMAN CARLISLE: The Secretary will read the section as amended.

Whereupon the Secretary read the section "c" as amended, as follows:

"The Judges shall be appointed by the Governor by and with the consent of three-fifths of all the Members elected to the Senate, for the term of twelve years, if they so long behave themselves well, and if any vacancy shall occur by expiration of term or otherwise at a time when the Senate shall not be in session the Governor shall within thirty days after the happening of any such vacancy convene the Senate for the purpose of confirming his appointment to the said vacancy and such other Executive business as may come before it for action.

EDWARD G. BRADFORD: Question on the motion.

DAVID S. CLARK: I call for the yeas and nays.

CHAIRMAN CARLISLE: The Secretary will please call the roll.

Whereupon the Secretary called the roll with the following result:

Yeas: Messrs. Bradford, Biggs, Burris, Carlisle, Cooch, Cooper, Dasey, Donahoe, Gilchrist, Hearne, Martin, Moore, Pratt, Richards, Saulsbury, Sapp, Spruance and Wright.

Nays: Messrs. Cannon, Clark, Ellegood, and Smithers.

Absent: Messrs. Cavender, Evans, Harman, Horsey, Hering, Johnson, Murray, and Orr.

Whereupon the Chair announced the result of the vote as follows:

Yeas, 18; Nays, 4. And declared the motion carried.

CHAIRMAN CARLISLE: Section "c" is therefore adopted as amended.

JOSHUA A. ELLEGOOD: Mr. Chairman, I move that the Committee of the Whole, do now rise, report progress and ask leave to sit again.

EDWARD G. BRADFORD: I second the motion.

Whereupon Mr. Carlisle, as Chairman of the Committee of the Whole, was instructed to report to the Convention that they had had under consideration the first report of the Committee on the. Judiciary, to report progress to the Convention and ask leave to sit again.

Motion put and carried.

Whereupon the Committee of the Whole (at 12.38 p.m.) then rose and President Biggs took the Chair.

PARIS T. CARLISLE, JR.: Mr. President, as Chairman of the Committee of the Whole, I have been instructed to report that they have had under consideration the first report of the Committee on the Judiciary, to report progress and to ask leave of the Convention for the Committee of the Whole to sit again.

[959] WOODBURN MARTIN: Mr. President, I move that the report be accepted and the Committee be granted leave to sit again.

ROBERT W. DASEY: I second the motion. Motion put and carried.

WOODBURN MARTIN: Mr. President, I move that the Convention do now adjourn until 2.30 o'clock this afternoon.

ROBERT W. DASEY: I second the motion.

Motion put and carried.

Whereupon the Convention (at 12.40 p.m.) adjourned until 2.30 o'clock p. m. same day.

* * * * *

AFTERNOON SESSION.

Dover, Del., February 9th, 1897. 2.30 o'clock p.m.

Pursuant to adjournment, the Convention to revise, alter or amend the Constitution of the State of Delaware, met at 2.30 o'clock p.m.

Convention called to order by President Biggs.

PRESIDENT BIGGS: Reports from Standing Committees are in order.

There being none, reports from Special Committees are next in order.

There being none, presentation of petitions, memorials etc., are next in order.

There being none, miscellaneous business is in order.

WILLIAM C. SPRUANCE: Mr. President, I move that the Convention do now go into Committee of the Whole for the purpose of further considering the first report of the Committee on the Judiciary.

CHARLES F. RICHARDS: I second the motion.

Motion put and carried.

Whereupon the President (at 2.40 p.m.) vacated the Chair and called Mr. Carlisle to the same.

The Members of the Convention then proceeded as a Committee of the Whole to consider the first report made by the Committee on the Judiciary.

WILLIAM C. SPRUANCE: Mr. Chairman, I would ask that the Secretary read paragraph "d" section. . . . .

CHAIRMAN CARLISLE: The Secretary will read paragraph "d" of the report.

Whereupon the Secretary read paragraph "d" of the report as follows:

"Section . . Any Judge shall have the right to resign his office after reaching the age of seventy years and thereafter receive the full salary attached to the office until the end of the term for which

* * *

[1764] CHAIRMAN GILCHRIST: The amendment therefore prevails.

WILLIAM C. SPRUANCE: I move the adoption of section 28 as amended.

EDWARD G. BRADFORD: I second the motion.

Motion put and carried.

CHAIRMAN GILCHRIST: Section 28 as amended is therefore adopted.

WILLIAM C. SPRUANCE: Mr. Chairman, in coming back over our work, the first thing that I observe that is undisposed of is the last three lines of section 3, which reads as follows:

"The said appointments shall be such, that no more than three of the said six Judges, in office at the same time, shall have been appointed from the same political party".

I move the adoption of those lines.

DAVID S. CLARK: I second the motion.

CHAIRMAN GILCHRIST: The Secretary informs me that there is an amendment to these three lines which has not been disposed of.

EDWARD G. BRADFORD: What is the amendment?

CHAIRMAN GILCHRIST: The Secretary will please read the amendment.

Whereupon the Secretary read the amendment as follows:

Strike out of the fourteenth line the word "six" and insert in lieu thereof the word "law"; so that it would read, "three of the said law Judges."

EDWARD G. BRADFORD: Just say the "five" law Judges.

WOODBURN MARTIN: I will accept the amendment.

JOHN BIGGS: As I understand the amendment as suggested by the Member from Christiana Hundred (Mr. Bradford) and as accepted by the Member from Seaford Hundred (Mr. Martin) it is to strike out the word "six" and substitute in lieu thereof the words "five law"; so that the second sentence would read, "The said appointments shall be such, that no more than three of the said five law Judges, in office at the same time, shall have been appointed from the same political party".

EDWARD D. HEARNE: That is the amendment now before the Committee?

CHAIRMAN GILCHRIST: Yes.

WILLIAM C. SPRUANCE: Mr. Chairman, it has been extremely gratifying to me to find prevalent in this Convention the very general feeling that we ought to do something by which we would make our Bench

non-partisan, or if it be a better word, bi-partisan; that is, that we should not have them all of the same political party. I have in mind an old maxim that "equality is equity". If there be anything in this idea, let us go the whole figure; let us come right up to the mark. Why confine this matter of non-partisanship to five of our six judges? Why not let it run clear through? You will observe that the Chancellor is left out here, and that there will be no restriction in [1765] regard to his appointment; and yet under the provision which is proposed to be added in regard to the trial of election cases, while he does not sit below, yet he sits as a Judge on appeals, and surely if there is any class of cases in which the Judges should be as near as possible equally divided, it ought to be upon trial of election cases. If you leave this thing there as it is, you just throw out the whole principle; and the principle runs right straight through, that no more than three of your six Judges shall have been chosen from the same political party; not that a man may change his opinion after he is appointed—that of course we cannot control—that is all right; but they shall not be chosen from the same political party; not that the other party shall be chosen from any other party designating it, but that no more than three shall have been chosen from that particular party.

That seems to me to be fair, reasonable and equitable. It may not appear to be entirely necessary now to some of our friends on the other side of the chamber, but it would appear, I am quite sure, to be eminently just to our friends who sit in the rear of this side of the chamber if they should happen to be in the saddle.

DAVID S. CLARK: That is what is the matter.

WILLIAM C. SPRUANCE: If they were in the saddle, I should like certainly equality. We are not making

a Constitution for today or for tomorrow. We are making it for all time. This may last probably for a generation, and it may be the last Constitution for two generations. We do not know in the upheaval of time how things may go. There may be then gentlemen who differ very very radically, and who may be suffering then as we are now.

Don't you think, Mr. Chairman, it would be fair all around if we just made this thing equal -- not to consider for an instant who is to be the man who should name the first batch of these, because life is very uncertain. All of the gentlemen who shall be appointed by the present Governor who will have these appointments, will surely not live their terms out. It is unheard of, that six men appointed for a given time should all live twelve years. They won't do it. There will be gaps here and there and the chances are if they are men past middle life who are appointed, there will be big gaps in their number. So we had better look out unless this thing comes back upon us. I am as much satisfied in that in the future as you are in the present.

JOHN BIGGS: Maybe more so.

WILLIAM C. SPRUANCE: As the gentleman says, maybe more so. I do not know what is coming. I think this is the time for us to be even and square all around in this thing; so let us stick to the report of this Convention which was so impartially considered and had the approval and countenance and signatures of all our friends on the other side of the chamber who differed with us upon other subjects, except Mr. Harman. I do think we would be doing ourselves great honor all around, as we have here gentlemen who are able to look beyond the present circumstances and the present opportunities to the future, and the exigencies that may come with the years that may come, and that

we would be more content and happy and safe if we applied the principle of equality as near as we might by the adoption of this.

[1766] JOHN BIGGS: The maxim which has been suggested by the gentleman from Wilmington (Mr. Spruance) that "equality is equity", is a very old one, but a very good one, and I am not here to dispute it or to gainsay it.

But I would like to call the Members' attention to the fact that the Superior Court, the Court of General Sessions and the Court of Oyer and Terminer are to be composed of five Judges and that those five Judges cannot be divided equally. It is a physical impossibility, and inasmuch as three of the five must come from one party or the other, it being a physical impossibility to make one man come from both parties, unless the Member from Wilmington (Mr. Spruance) can accomplish some anatomical feat that I have not yet learned of, it must necessarily follow that three out of the five must come from one political party or the other. And therefore I take it it is necessary, in order to carry out this equality in equity and the principle of equality in equity, and in order to show that generosity of which we have all been disposed to tender and carry out, that the offer of the amendment made by the Member from Seaford Hundred (Mr. Martin) would be carried out by this Committee.

WOODBURN MARTIN: I only have a word to say in this connection, Mr. Chairman, and that is this: My idea in offering this amendment coincided exactly with those expressed by my friend from Wilmington (Mr. Biggs) who has just taken his seat. I cannot see, out of five Judges composing a Court, how that Court could be made non-partisan unless you would get two from the Democratic Party and two from the Republican

Party and one who was not anything on the face of the earth, and that would be almost impossible to do under existing circumstances.

EDWARD G. BRADFORD: The Single Taxers.

ROBERT W. DASEY: And Prohibitionists.

WOODBURN MARTIN: There is no danger of that. I have modified my views somewhat in offering this amendment. My first inclination was to substitute the word "four" for the word "three", "that no more than four of the six should come from the same political party"; but I thought I would do better than that, and knowing that our friends on the other side who are in a minority would remind us of that fact and tell us that we ought to be as charitable toward them as we could, and do as much for them as possible, I feel that I am disposed to do that. I do not think the Chancellor ought to be taken into consideration in this matter, but whatever party is in power should be allowed to appoint the Chancellor. He can be confirmed by three-fifths of the Senate.

The office of the Chancellor is a peculiar one. It is peculiar to himself. He has nothing to do with whatever but Chancery jurisdiction, except to sit in the Court of Errors and Appeals. This Court could be so arranged by whatever party was in power, if we should have a Bench divided three to three, that all of one party might hear the election cases in one case, and all of the other party might hear them upon appeal or writ of error. But I do not imagine for one instant that that thing will be done.

[1767] And the reason I think it is desirable to have the minority party represented on our Bench is that they may bring about a fuller and freer discussion of these matters that come before them and that they

may make fair and impartial decisions on those questions.

I think that this is the best that can be done. I think it is all that the people expect of us. It will not be a hardship on the people. It is hardly fair to presume that officers who are elected by the people will appoint certain officers to places who are not in accord with the wishes of the people as expressed at the polls. It is hardly to be expected that Democrats are elected to office to appoint Republican Judges, or that Republicans are elected to office to appoint Democrats; but they are expected to appoint those of their same political opinions.

Therefore, I would leave this office of Chancellor out of the question entirely and let that party which is in power, when a vacancy occurs, have the appointing of that office.

As to the Superior Court, of course, we can do nothing more than to have three from one party and two from the other. There are six Judges in our Superior Court and Court of Chancery, besides a Federal Judge which is usually given to this State, that is, to this district. If you want to make them even in the State, you cannot do any more than to give three of these officers to one party and four to the other, let it be which it may.

EDWARD G. BRADFORD: I shall state, Mr. Chairman, very frankly, the view I entertain about this matter. I understand that the report of the Committee, insofar as it provides that no more than three of the said six Judges shall have been appointed from one political party, is proposed to be amended by the insertion of "three of the said five law Judges".

I confess that to me it makes very little difference whether the report as originally made be adopted or this amendment be adopted, for as I regard the matter, this is not an act of the legislature which we are passing which may be in force for six months or a year or two years and then be repealed, but if this Constitution is adopted it may be in existence for fifty years and during that time in all human probability you will have, with the revolving years, political changes, and the situation as you find it today won't be the same as you may find it five years hence, or as you may find it ten years hence, or as you may find it fifteen years hence, or twenty-five years hence.

I think that in the course of time an that matter will adjust itself. Therefore, it makes very little difference to me as I say whether the three and three proposition stands, or the three of the five law Judges proposition stands. Of course, I would not be doing myself justice were I not to express my preference for a certain provision. That would naturally be my preference, because that would be the realization and the most complete in respect of what I should consider a non-partisan Bench. But, at the same time, I, for one, while I should be very much pleased indeed if some gentleman would withdraw that amendment and vote for the original bill—and I will say right here I do not propose to vote against that amendment, if it is pressed.

[1768] My views about this Constitution may have been rather peculiar from the start. From the very beginning I was in favor, as you gentlemen know, of a strictly non-partisan Convention, evenly divided, and did all within my power to bring about that result in New Castle County; and that was upon the ground that I had sufficient faith that when the business men were put up on each side they would not meet together

as pot-house politicians and dispose of matters on that plane, but that they would discuss matters seriously as being the right thing, and I was perfectly willing to take my chances with such a Convention, because I thought they would do the right thing in the long run, and while there might be differences of opinion, there would be mutual concessions on both sides so that some instrument might emanate from this body which being adopted would be a credit to the State regardless of the political affiliations or opinions of the members of this or that particular party.

We have never had, since I have been a Member of this Convention, a line drawn upon any such subject, and I don't want to see a line drawn upon any such subject to the end of this Convention. I do not want to see it. I want to see this Convention harmonious from beginning to end.

Therefore, I say, that while it is against my natural desire and against my own notion of what would be the best thing to do, namely, an exactly equal division, I do not feel disposed, if that amendment is pressed, to antagonize it.

Having expressed these views, I do not know what more I can say upon the subject. After all, I think the matter will adjust itself in no very long time one way or the other. Things are bound to change one way or the other.

ANDREW L. JOHNSON: Mr. Chairman, as between the two propositions I have very little choice, but I am thoroughly opposed to compelling a Governor of this State to appoint any man on account of his political affiliations.

It is well known that our Judiciary at the present time have been appointed from one political party. That

probably is not the best course to pursue, and I would be very glad to see the Governor of this State appoint well equipped men from another party. I would hail the day when it was done and would he glad to have it; but to vote to compel a Governor to appoint a man on account of his political affiliation, you are simply saying, 'You are put upon the Bench to look out for our party interests whenever they come up". There is no other construction that you can put upon it. There can be no other, in my own mind, established, and that man is expected, whenever a political question arises, before that Court to take care of his own party rights or privileges.

For those reasons I am opposed to putting in the Constitution any provision that compels certain partisan appointments of the Judiciary.

JOSHUA A. ELLEGOOD: Mr. Chairman, when I was nominated and elected it was upon a non-partisan or bi-partisan ticket, five Democrats and five Republicans, and when I left my home and came to this Convention, I tried to leave, for the time being, politics behind me. [1769] Like the gentleman from Christiana Hundred (Mr. Bradford) I never want to see lines drawn here on questions or where we shall divide according to political opinions.

It seems to me in framing the organic law of this State, a law that may stand for fifty years as the basis for all future law until this Constitution is amended or made anew, it should not bear the finger marks of men who are of different party lines. If it is right that the Judges of this State should be divided equally politically, then let us make it so; if it is in the interest of public justice and the people of this State are more apt, under a system of that kind, to have justice done than under any other, then I am willing to make it so. But,

on the other hand, if we consider that the Chancellor is not a law Judge, and that he will not be called in question to sit in political cases outside of the Court of Errors and Appeals, then let us vote for the amendment as it now stands.

As the gentleman from Christiana Hundred (Mr. Bradford) has well said, there will come a time in the history of all political parties when they must surrender their power to their opponents, and in times like that it is altogether in whose ox is being gored.

So I am like the gentleman (Mr. Bradford), I am willing to vote for either proposition if that is best, but if you take the Chancellor away and then you want to make three of the law Judges of one political party and two of another, I am perfectly willing to support that.

With these few words, I believe in all my future actions in this Convention that I shall cast my vote for what I consider to be the best interest of the people of Delaware without any reference whatever to my political opinion.

EDWARD D. HEARNE: Mr. Chairman, we are now living under the third Constitution of the State of Delaware, and this proposed amendment, or portion of the Judiciary report, I believe is the first reference that has ever been made to politics with respect to the appointment by the Constitution of our Judiciary. In none of the other Constitutions will you find any reference to it whatever.

I am a young man, but I have lived through periods in the State of Delaware when our State Judiciary was solidly composed of members of that political party which was in opposition to the party from which the present Judiciary was appointed. I have seen a complete change, and I, for one, in my observations of the

workings of our Courts, have no fault to find with any decision that has ever been made by either Court, whether that was Republican or Democrat, on the score of politics. I cannot for the life of me see any just substantial legal reason why we should make any reference to the politics of our Judiciary. I say, I cannot see why we should do it.

ROBERT W. DASEY: This matter is like a great many others. The people ask for it and after they get it they don't appreciate it. It has been stated that there was not satisfaction given, no matter how able the Judges might be, when they were all from one political party. The time has been in the history of this State when they have all been from one political party and also the time when they have [1770] been all from another political party, which is the case now. I think it would give more satisfaction to the people if the Judges were not all from the same political party. That is my opinion.

I want to state that I am as much opposed to anything of a partisan nature which tends to enter into our Judicial deliberations, as any gentleman on this floor. I want to be honest, and I want to be sincere. As the gentleman from Georgetown (Mr. Hearne) has said, this is the first time there has ever been offered a section of this nature to be entered into our Constitution. We might go further than is stated here. If we say six, we might say seven, because there is now a vacancy on the Federal Bench to be filled by the party represented by the gentlemen on the other side of this House; and that vacancy will surely be filled from that political party.

WILLIAM C. SPRUANCE: The last Federal appointment was made by a Republican President, and the man who received the appointment was a Democrat.

The Judge of the Circuit Court of the District of Delaware that was last appointed was Judge Dallas, and he was appointed by Mr. Harrison. And Judge Dallas was a Democrat.

ROBERT W. DASEY: It is a fact that this vacancy which exists now is to be filled by a gentleman from Delaware, isn't it?

WILLIAM C. SPRUANCE: Yes.

ROBERT W. DASEY: There is a Judge to be appointed, and he will surely come from the party which my friend represents. And not only that, the first one that resigns or becomes disabled for any cause, his place will be filled from that political party, I will guarantee.

I cannot see, if we are going to make it non-partisan how we can make it any fairer than to have three out of the five Judges, allowing the Chancellor to remain outside so as to balance the Federal judgeship, an appointment for which is going to be made pretty soon.

JOHN BIGGS: Question on the motion.

JOHN P. DONAHOE: I call for the yeas and nays.

CHAIRMAN GILCHRIST: The Secretary will please call the roll. Whereupon the Secretary called the roll with the following result:

Yeas: Messrs. Bradford, Biggs, Cooper, Dasey, Donahoe, Ellegood, Gilchrist, Hearne, Horsey, Johnson, Martin, Moore, and Orr.

Nays: Messrs. Burris, Cannon, Clark, Hering, Sapp, Spruance, and Wright.

Absent: Messrs. Carlisle, Cavender, Cooch, Evans, Harman, Murray, Pratt, Richards, Saulsbury, and Smithers.

Whereupon the Chair announced the result of the vote as follows:

Yeas, 13; Nays, 7. And declared the motion carried; and the amendment prevailed.

CHAIRMAN GILCHRIST: The question is now on the adoption of lines thirteen, fourteen and fifteen as amended of section three.

ANDREW L. JOHNSON: I call for the yeas and nays.

WILLIAM C. SPRUANCE: I would ask that the lines be read.

[1771] CHAIRMAN GILCHRIST: The Secretary will please read the 13th, 14th and 15th lines as amended of section 3.

Whereupon the Secretary read the 13th, 14th and 15th lines as amended of section 3 as follows:

"The said appointments shall be such, that no more than three of the said five law Judges, in office at the same time, shall have been appointed from the same political party."

CHAIRMAN GILCHRIST: The Secretary will please call the roll. Whereupon the Secretary called the roll with the following result:

Yeas: Messrs. Bradford, Biggs, Burris, Cannon, Clark, Dasey, Ellegood, Gilchrist, Hering, Martin, Moore, Orr, Spruance and Wright.

Nays: Messrs. Cooper, Donahoe, Hearne, Horsey, Johnson, and Sapp.

Absent: Messrs. Carlisle, Cavender, Cooch, Evans, Harman, Murray, Pratt, Richards, Saulsbury, and Smithers.

Whereupon the Chair announced the result of the vote as follows:

Yeas, 14; Nays, 6. And declared the motion carried; and lines thirteen, fourteen and fifteen, as amended, adopted.

WILLIAM C. SPRUANCE: Mr. Chairman, I think we are now in a position to change the numbering of these sections.

You will observe that section 4 was dropped out. In going over this thing I think that section 10 ought to be brought next after what is now section 5, or rather next after what is now section 6.

I therefore move that section 5 be made section 4, section 6 be made section 5, section 10 be made section 6, section 11 be made section 10, and thereafter the sections be numbered consecutively.

JOHN BIGGS: I second the motion.

Motion put and carried.

CHAIRMAN GILCHRIST: The sections are therefore re-numbered as stated in the motion.

WILLIAM C. SPRUANCE: Mr. Chairman, I move that we now take up for consideration section 13.

EDWARD G. BRADFORD: I second the motion.

Motion put and carried.

CHAIRMAN GILCHRIST: Section 13 is now before the Committee of the Whole for consideration.

WILLIAM C. SPRUANCE: I move that lines one, two, three, four and five of section 13 be adopted.

JOHN BIGGS: I second the motion.

WILLIAM C. SPRUANCE: I ask that the Secretary will read lines 1, 2, 3, 4 and 5 of section 13.

CHAIRMAN GILCHRIST: The Secretary will please read lines 1, 2, 3, 4, and 5 of section 13.

* * *

[3445] GEORGE H. MURRAY: Mr. President, I have a resolution to offer, and I ask that the Secretary read the same.

PRESIDENT BIGGS: The Secretary will please read the resolution.

Whereupon the Secretary read the resolution as follows:

Mr. Murray, from Committee on Accounts, submits the following report:

The Committee on Accounts recommends the adoption of the following resolution:

RESOLVED, That the President of the Convention be and he is hereby authorized to draw warrants upon the State Treasurer for printing and supplies on account of the contingent expenses of the Convention, as follows:

In favor of the *Delawarean* for six hundred and sixty-eight dollars and seventy-five cents;

In favor of the *Dover Index* for eighty dollars;

In favor of the *Sussex Republican* for sixteen dollars;

In favor of the State Sentinel Printing Company for three dollars.

JAMES B. GILCHRIST: Mr. President, I move that the report be accepted and the resolution adopted.

JOSHUA A. ELLEGOOD: I second the motion. Motion put and carried.

PRESIDENT BIGGS: The report is therefore received and the resolution is adopted.

WILLIAM SAULSBURY: Mr. President, I have here the bill of Charles R. Jones for enrolling.

I move that it be referred to the Committee on Accounts.

CHARLES F. RICHARDS: I second the motion.

Motion put and carried.

PRESIDENT BIGGS: The bill is therefore referred to the Committee on Accounts.

JOHN W. HERING: Mr. President, I have here a bill in favor of the *Delawarean*.

I move that it be referred to the Committee on Accounts.

JOSHUA A. ELLEGOOD: I second the motion.

Motion put and carried.

PRESIDENT BIGGS: The bill is therefore referred to the Committee on Accounts.

WILLIAM C. SPRUANCE: Mr. President, the fact that the provision in reference to the appointment of the first Chancellor, Chief Justice and Associate Judges under this amended Constitution, as found in the tenth section of the Schedule, is in the Schedule and not in the Constitution has been the subject of some criticism.

[3446] It is claimed by some persons that it would not be valid in the Schedule; that it ought to have been in the Constitution.

Mr. President, as it is a vital section, and there ought to be no ground for cavil as to the legality of the first appointment of the Judges, if there is anything in that objection we ought to cure it while we may.

I have conferred with a number of the gentlemen of the Convention, lawyers and others, and they agreed that it would be wise to transfer that provision to the proper place in the Constitution.

After some conference, several of us have concluded that the proper place to transfer that to would be to the third section of the Judiciary report on page 46. I therefore ask unanimous consent, Mr. President, as follows:

That section 10 of the Schedule be transferred to the third section of the fourth article of the Constitution so that said section shall read as follows:

PRESIDENT BIGGS: Is not that section 12 of the Schedule instead of section 10?

WILLIAM C. SPRUANCE: No, Sir; it is section 10 of the Schedule.

I ask the attention of the gentlemen to this fact: That there is a little confusion about the two Schedule pamphlets. The one that was reported by the Committee on Phraseology, as regards this particular section is not the one that was adopted.

We have a few copies before us of the printed Schedule as reported by the Committee of the Whole, and that is the one I am talking about; that is the one that has been adopted.

NATHAN PRATT: Mr. President, I have not a copy of that, and I would like to hear the section read.

PRESIDENT BIGGS: The Secretary will please read section 10 of the last printed Schedule.

WILLIAM C. SPRUANCE: It is not in the first report at all.

If the gentlemen will take that in hand they will see in a minute what is proposed to be transferred in that section.

So that that section down to the last word in the fourth line would read as follows:

"The Chancellor, Chief Justice and Associate Judges shall be appointed by the Governor, by and with the consent of a majority of all the Members elected to the Senate, for the term of twelve years."

Then strike out the word "and" at the end of the fourth line—this is in the Constitution—and insert as follows:

"Provided further that the Chancellor, Chief Justice and Associate Judges first to be appointed under this amended Constitution shall be appointed by the Governor without the consent of the Senate for the term of twelve years and the persons—

WILLIAM SAULSBURY: We have used the word "amended" in the Constitution.

[3447] WILLIAM C. SPRUANCE: Had we better leave the word "amended" in or strike it out?

PRESIDENT BIGGS: Will the Member (Mr. Spruance) just call to our attention to what part of the Constitution he wants to make a change in?

WILLIAM C. SPRUANCE: Page 46, section 3.

PRESIDENT BIGGS: What are the changes?

WILLIAM C. SPRUANCE: It will read as follows: "The Chancellor, Chief Justice and Associate Judges shall be appointed by the Governor, by and with the consent of a majority of all the Members elected to the Senate for the term of twelve years". Then after the word "years" make a period.

J. WILKINS COOCH: A period after "years" and then a capital letter?

WILLIAM C. SPRUANCE: No; a semi-colon.

PRESIDENT BIGGS: There is a comma there now.

WILLIAM C. SPRUANCE: Yes; but make it a semi-colon.

Strike out the word "and" and insert in lieu of that word the following:

"Provided, however, that the Chancellor, Chief Justice and Associate Judges first to be appointed under this amended Constitution shall be appointed by the Governor without the consent of the Senate for the term of twelve years, and the persons so appointed shall enter upon the discharge of the duties of their respective offices upon taking the oath of office prescribed by this amended Constitution."

Then the next word "if" shall begin with a capital I; and then it reads on.

PRESIDENT BIGGS: The Member from Wilmington (Mr. Spruance) asks unanimous consent that section 3 on page 46, relative to the Judiciary, be changed as follows:

That the comma after the word "years" in the fourth line be changed to a semi-colon; that the word "and" be stricken out, and in lieu thereof the following be inserted:

"Provided, however that the Chancellor, Chief Justice and Associate Judges first to be appointed under this amended Constitution shall be appointed by the Governor without the consent of the Senate for the term of twelve years, and the persons so appointed shall enter upon the discharge of the duties of their respective offices upon taking the oath of office prescribed by this amended Constitution".

Then to change the small "i" in the next word to a capital "I" and the remainder of that section to read as it is printed in the Constitution.

Are there any objections to that request being granted?

The Chair hears none, and the Secretary will therefore make the changes.

[3448] Whereupon the Secretary made the changes as directed by the Chair.

PRESIDENT BIGGS: The Secretary will please read the first part of that section 3 as it now stands changed by unanimous consent.

Whereupon the Secretary read the first part of section 3 as changed by unanimous consent as follows:

"Section 3. The Chancellor, Chief Justice and Associate Judges shall be appointed by the Governor, by and with the consent of a majority of all the Members elected to the Senate, for the term of twelve years; provided, however, that the Chancellor, Chief Justice and Associate Judges first to be appointed under this amended Constitution shall be appointed by the Governor without the consent of the Senate for the term of twelve years, and the persons so appointed shall enter upon the discharge of the duties of their respective offices upon taking the oath of office

prescribed by this amended Constitution. If a vacancy shall occur" etc.

PRESIDENT BIGGS: Those are the corrections, therefore, that are made by unanimous consent.

WILLIAM C. SPRUANCE: Mr. President, I ask unanimous consent to correct the Schedule by striking out section 10 and making section 11 section 10, and numbering the subsequent sections consecutively.

PRESIDENT BIGGS: The gentleman from Wilmington (Mr. Spruance) asks unanimous consent that section 10 as adopted by the Convention heretofore be stricken out of the Schedule, the same being embodied in the Constitution; and in addition to that, that section 11 be numbered section 10, and the following numbers of the sections thereafter be numbered consecutively.

Is there any objection?

The Chair hears none, and unanimous consent is therefore given that section 10 be stricken from the Schedule, it already being embodied in the Constitution, and that section 11 be numbered section 10, and the sections thereafter be numbered consecutively.

The Secretary will please make the record to conform therewith.

WILLIAM SAULSBURY: Mr. President, I am instructed by the Committee on Accounts to submit the following report, which I ask to have read.

PRESIDENT BIGGS: The Secretary will please read the report.

Whereupon the Secretary read the report as follows:

The Committee on Accounts recommends the adoption of the following resolution:

RESOLVED, that the President of the Convention be, and he is hereby authorized to draw warrants upon the State Treasurer for supplies and services on account of the contingent expenses of the Convention as follows:

In favor of Clark & McDaniel, for fourteen dollars and thirty-nine cents ;

* * *

SPONSOR Rep. Matushefske

COMMITTEE _____

[SEAL]

HOUSE OF REPRESENTATIVES
129TH GENERAL ASSEMBLY
FIRST SESSION - 1977

HOUSE BILL NO. 581 June 30 1977

AN ACT CONCURRING IN A PROPOSED AMENDMENT TO ARTICLE 4, SECTIONS 2, 3 AND 12 OF THE CONSTITUTION OF THE STATE OF DELAWARE BY INCREASING THE SUPREME COURT TO FIVE JUSTICES AND PROVIDING FOR A QUORUM OF THE SUPREME COURT.

WHEREAS, an amendment to the Constitution of the State of Delaware was proposed in the 128th General Assembly, being Chapter 540, Volume 60, Laws of Delaware, as follows:

> "An Act Proposing an Amendment to Article 4, Sections 2, 3 and 12 of the Constitution of the State of Delaware by Increasing the Supreme Court to Five Justices and Providing for a Quorum of the Supreme Court.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (two-thirds of the members elected to each branch thereof concurring therein):

Section 1. Article 4, Section 2 of the Constitution of the State of Delaware of 1897 is amended by striking the word "three" as it appears after the words "shall be" and before the word "Justices" in the first line of said section, and substituting in lieu thereof the word "five".

Section 2. Article 4, Section 3, paragraph 3 of the Constitution of the State of Delaware of 1897, as amended, is amended to read as follows:

> "First, three of the five Justices of the Supreme Court in office at the same time, shall be of one major political party, and two of said Justices shall be of the other major political party."

Section 3, Article 4, Section 3, paragraph 5 of the Constitution of the State of Delaware of 1897, as amended, is amended by striking the word "three" as it appears in Article 4, Section 3, paragraph 5.

Section 4. Article 4, Section 12 of the Constitution of the State of Delaware of 1897, as amended, is amended to read as follows:

> "§12. Composition of Supreme Court; designation of temporary Justices, quorum; opening and adjourning court.
>
> Section 12. A quorum of the Supreme Court shall consist of not less than three Justices. The entire Court shall sit in any criminal case in which the accused has been sentenced to death and in such other civil and criminal cases as the Court, by rule, or the General Assembly, upon the concurrence of two-thirds of all the members elected to each house, shall determine. In case of a lack of quorum by reason of vacancies in their number, incapacity, or disqualification to sit by reason of interest, or to constitute a three-member panel of the Court, the Chief Justice of the Supreme Court, or if he is disqualified or incapacitated or if there is a vacancy in that office, the Justice, who by seniority is next in rank to the Chief Justice, shall have the power to desig-

nate judges from among the judges of the constitutional courts to sit in the Supreme Court temporarily to fill up the number of Justices required by law. It shall be the duty of the judges of the constitutional courts so designated to sit accordingly. No judge shall be so designated to sit in the supreme Court in any cause in which he sat below. Any one of the Justices of the Supreme Court may open and adjourn court."

WHEREAS, the said proposed amendment was agreed to by two-thirds of all the members elected to each House in the said 128th General Assembly.

NOW THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (two-thirds of the members elected to each branch thereof concurring therein):

Section 1. The said proposed amendment is agreed to and adopted and shall forthwith become a part of the Constitution of the State of Delaware.

SYNOPSIS

This bill completes the amendment to the Delaware Constitution to increase the membership of the Supreme Court from three to five.

[SEAL]

SPONSOR: Sen. Adams, Rep. Barnes

DELAWARE STATE SENATE
132ND GENERAL ASSEMBLY

SENATE BILL NO. 296 JUN 7 1983

AN ACT CONCURRING IN A PROPOSED AMENDMENT TO ARTICLE IV, SECTION 3 OF THE CONSTITUTION OF THE STATE OF DELAWARE RELATING TO THE JUDICIARY.

WHEREAS, an Amendment to the Constitution of the State of Delaware was proposed in the 131st General Assembly being Chapter 377, Volume 63, Laws of Delaware, as follows:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend Section 3, Article IV of the Constitution of the State of Delaware by striking the first paragraph beginning with the words "The Justice of the Supreme Court" and ending with the words "full term" and substituting in lieu thereof the following:

> "Section 3. The Justices of the Supreme Court, the Chancellor and the Vice-Chancellor or Vice-Chancellors, and the President Judge and Associate Judges of the Superior Court shall be appointed by the Governor, by and with the consent of a majority of all the members elected to the Senate, for the term of twelve years each, and the persons so appointed shall enter upon the discharge of the duties of their respective offices upon

taking the oath of office prescribed by this Constitution. The Governor shall submit his appointment within sixty (60) days after the occurrence of a vacancy howsoever caused. If a vacancy shall occur, by expiration of term or otherwise, at a time when the Senate shall not be in session, the Governor shall within sixty (60) days after the happening of any such vacancy convene the Senate for the purpose of confirming his appointment to fill said vacancy and the transaction of such other executive business as may come before it. Such vacancy shall be filled as aforesaid for the full term. Notwithstanding a vacancy, whether occurring when the Senate is or is not in session, an incumbent whose term has expired shall hold over in office until the incumbent, or a new appointee, is confirmed and takes the oath of office for the next term, but In no event shall an incumbent whose term has expired hold over in office for more than sixty (60) days after the expiration of the term. In all instances the term of a new or reappointed Justice of the Supreme Court, Chancellor or Vice-Chancellor, President Judge or Associate Judge of the Superior Court shall begin on the date that the oath of office is taken, thus qualifying the individual to serve, but the appointment shall be forfeit if such oath is not taken within thirty (30) days of confirmation."

WHEREAS, the said proposed amendment was adopted by two-thirds of all members elected to each House of the the 131st General Assembly.

NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

> Section 1. The said proposed amendment is hereby concurred in and adopted, and shall forthwith become a part of the Constitution of the State of Delaware.

SYNOPSIS

The Delaware Constitution presently provides that if the Senate is not in session when a vacancy occurs in a constitutional judgeship by virtue of the expiration of a term, death, disability or resignation, the Governor must convene a special session within 30 days to act on a new appointment. The Constitution is silent as to when the Governor must make an appointment to fill such vacancy occurring when the Senate is in session, although the Delaware Supreme Court has opined that the Governor must act "...as promptly as may be reasonable and practicable in fulfillment of the urgencies of the judicial system of the State." In re Opinion of the Justices, Del. Supr., 320 A. 2d 735, at 738 (1974). However, if action is not taken by the time the previous term expires, the Delaware Constitution presently prohibits holding over in office by constitutional judges, Opinion of the Justices, Del. Supr., 189 A. 2d 777, at 779 (1963).

Resent Delaware history indicates that the Senate is seldom out of session for more than 90 days at a time, and that special sessions can he expensive and inconvenient. However, when incumbent constitutional judges are reappointed there are difficulties in case load management and insecurities from loss of

salary, health, disability and pension benefits that result from breaks or gaps even of a short duration in the continuity of service. And whenever vacancies are filled by new appointees, losses of judicial manpower should be kept to an absolute minimum.

The proposed amendment addresses these deficiencies by providing for a limited period during which an incumbent holds over in office until he or a new appointee takes the oath for the next term. It also provides that the term of a judge or justice shall begin upon taking the oath which must be within 30 days of confirmation.

Author - Sen. Adams

[SEAL]

SPONSOR: Sen. Vaughn & Rep. Valihura

Sens.	Reps.
McDowell	Wagner
DeLuca	Lavelle
Adams	Stone
Simpson	George
	Keeley
	Hudson

DELAWARE STATE SENATE
143rd GENERAL ASSEMBLY

SENATE BILL NO. 61 MAR 24 2005

AN ACT CONCURRING IN A PROPOSED AMENDMENT TO ARTICLE IV OF THE DELAWARE CONSTITUTION OF 1897 TO INCLUDE THE FAMILY COURT AND COURT OF COMMON PLEAS AS COURTS ESTABLISHED BY THE CONSTITUTION OF THE STATE OF DELAWARE AND ARTICLES III AND IV OF THE DELAWARE CONSTITUTION OF THE STATE OF DELAWARE TO DELETE REFERENCES TO THE ORPHANS' COURT.

WHEREAS, AN. AMENDMENT TO THE CONSTUTITION OF THE STATE OF DELAWARE WAS PROPOSED IN THE 142ND GENERAL ASSEMBLY, BEING CHAPTER 299, VOLUME 74, LAWS OF DELAWARE, AND PASSED ON JUNE 29, 2004, AS FOLLOWS:

"AN ACT TO PROPOSE AN AMENDMENT TO ARTICLE IV OF THE DELAWARE CONSTITUTION OF 1897 TO INCLUDE THE FAMILY COURT AND COURT OF COMMON PLEAS AS COURTS ESTABLISHED BY THE CONSTITUTION OF THE STATE OF DELAWARE AND ARTICLES AND IV OF THE

DELAWARE CONSTITUTION OF THE STATE OF DELAWARE TO DELETE REFERENCES TO THE ORPHANS' COURT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend Article IV, Section 1 of the Constitution of the State of Delaware by adding the Words "a Family Court, a Court of Common Pleas," after the phrase "a Court of Chancery," and before the phrase "an Orphans' Court" as that phrase heretofore appears.

Section 2. Amend Article IV, Section 2 of the Constitution by striking the second, third and fourth full paragraphs of said Section, and substituting in lieu thereof the following:

"In addition to members of the Supreme Court there shall be other State Judges, who shall be citizens of the State and learned in the law. They shall include: (1) the Chancellor and the Vice-Chancellors; (2) The President Judge and the Associate Judges of the Superior Court, three of whom shall be Resident Associate Judges and one of whom shall after appointment reside in each county of the State; (3) the Chief Judge and the Associate Judges of the Family Court; and (4) the Chief Judge and Judges of the Court of Common Pleas, one of whom after appointment shall reside in each county of the State.

There shall also be such number of additional Vice-Chancellors, Associate Judges and Judges as may hereinafter be Act of the General Assembly. Each of such Vice-Chancellors, Associate Judges, and Judges shall be citizens of the learned in the law.

If it is otherwise impossible to determine seniority of service among the Vice-Chancellors, or among the said Assoc among the said Judges, they shall determine it by lot respectively and certify accordingly to the Governor.".

Section 3. Amend Article IV, Section 3 of the Constitution of the State of Delaware by striking the word "a *** phrase "or Vice-Chancellors," as that phrase appears in the first sentence of the first paragraph of said Section by ado" *** ", the Chief Judge and Associate Judges of the Family Court and the Chief Judge and Judges of the Court of Common *** the phrase "Associate Judges of the Superior Court" as that phrase appears in the first sentence of the first paragraph *** Section; by adding the words ", Chief Judge or Associate Judge of the Family Court or Chief Judge or Judge of the C *** Common Pleas" after the phrase "Associate Judge of the Superior Court" as that phrase appears in the sixth sentence *** paragraph of said Section; and by redesignating current paragraph "Fourth" as paragraph "Sixth" and adding new par *** "Fourth" and "Fifth" after paragraph "Third" to read as follows:

"Fourth, at any time when the total number of Judges of the Family Court shall be an even number, not more than one- *** Judges shall be of the same political party; and at any time when the total number of Judges shall be an odd number, th *** than a majority of one Judge shall be of the same political party.

Fifth, at any time when the total number of Judges of the Court of Common Pleas shall be an even number, not more th *** of the Judges shall be of the Same political party; and at any time when the total number of Judges shall be an odd num *** more than a

majority of one Judge shall be of the same political party."

Section 4. Amend Article IV, Section 4 of the Constitution of the State of Delaware by striking the word "and *** phrase "or Vice-Chancellors," as that phrase appears in the first sentence of said Section; and by adding the words "the and Associate Judges of the Family Court and the Chief Judge and Judges of the Court of Common Pleas" after the phra *** "Orphans' Court" as that phrase appears in the same sentence.

Section 5. Amend Article IV of the Constitution of the State of Delaware by adding thereto a new Section imm *** following Section 7, which new Section shall read in its entirety as follows:

"§7A. Jurisdiction of Family Court.

Section 7A. The Family court shall have all the jurisdiction and powers vested by the laws of this State in the Fa *** Court.".

Section 6. Amend Article IV of the Constitution of the State of Delaware by adding thereto a new Section, which Section shall read in its entirety as follows:

"§7B. Jurisdiction of Court of Common Pleas.

Section 7B. The Court of Common Pleas shall have all the jurisdiction and powers vested by the laws of this State in the Court of Common Pleas.".

Section 7. Amend Article IV, Section 13 of the Constitution of the State of Delaware by deleting the phrase ", the Superior Court or the Orphans' Court" as found in the title of said Section and replacing it with the phrase "or the Superior Court" and by striking paragraph (2) in its entirety, and substituting in lieu thereof the following:

"(2) Upon written request made by the Chancellor, President Judge of the Superior Court, the Chief Judge of the Family Court, or the Chief Judge of the Court of Common Pleas, or in the event of an absence or incapacity, by the next qualified and available Vice-Chancellor, Associate Judge or Judge, who is senior in length of service, to designate one or more of the State Judges (including the Justices of the Supreme Court) to sit in the Court of Chancery, the Superior Court, the Family Court or the Court of Common Pleas, as the case may be, and to hear and decide such causes in such Court and for such period of time as shall be designated. It shall be the duty of the State Judge so designated to serve according to such designation as a Judge of the Court designated. The provisions of this paragraph shall not be deemed to limit in any manner the powers conferred upon the judges of the Superior Court under Section 14 of this Article.".

Section 8. Amend Article IV, Section 17 of the Constitution of the State of Delaware by striking the phrase "the Orphans' Court" as it appears twice therein and adding the words ", the Family Court hereby established, the Court of Common Pleas hereby established" after "established" as it appears in the first sentence of said Section; by substituting the word "any" for the word "either" as it appears in the first sentence of said Section; and by adding the words ", the Family Court, the Court of Common Pleas" after the phrase "Superior Court" as that phrase appears in the second sentence of said Section.

Section 9. Amend Article IV, Section 18 of the Constitution of the State of Delaware by adding a second sentence thereto, which shall read as follows:

"Until the General Assembly shall otherwise provide, the Chief Judge of the Family Court and the Associate Judges of said Court, respectively, shall each singly exercise all the powers which any law of this State vests in the Judges of Family Court, whether as members of the Court or otherwise, and the Chief Judge of the Court of Common Pleas and the Judges of said Court, respectively, shall each singly exercise all the powers which any law of the State vests in the Judges of the Court of Common Pleas, whether as members of the Court or otherwise.".

Section 10. Amend Article IV of the Constitution of the State of Delaware by adding the new Section 34A, which shall read as follows:

"§34A. Continuation in office and designation of judicial officers of the Family Court and the Court of Common Pleas.

Section 34A. The Chief Judge and the Associate Judges of the Family Court and the Chief Judge and the Judges of the Court of Common Pleas in office at and immediately before the time this amended Article IV of this Constitution becomes effective shall hold their respective offices until the expiration of their terms, respectively, and shall receive the compensation provided by law.".

Section 11. Amend Article IV, Section 37 of the Constitution of the State of Delaware by striking the word "and" after the phrase "the Chancellor," as it appears in the first sentence thereof; and by adding the words ", the Chief Judge of the Family Court and the Chief Judge of the Court of Common Pleas" after the phrase

"President Judge of the Superior Court" and before the period "." in that same sentence.

Section 12. Amend Article III, Section 22 of the Constitution of the State of Delaware by striking the phrase ", Clerks of the Orphans' Court" as that phrase appears therein.

Section 13. Amend Article III, Section 23 of the Constitution of the State of Delaware by striking the phrase ", Clerks of the Orphans' Court" as that phrase appears therein.

Section 14. Amend Article III of the Constitution of the State of Delaware by striking Section 4 in its entirety.

Section 15: Amend Article IV, Section 1 of the Constitution of the State of Delaware by striking the phrase "an Orphans' Court," as that phrase appears therein.

Section 16. Amend Article IV, Section 2 of the Constitution of the State of Delaware by striking the phrase "and of the Orphans' Court" as that phrase appears twice therein.

Section 17. Amend Article IV, Section 3 of the Constitution of the State of Delaware by striking the phrase 'and Orphans' Court" as that phrase appears twice therein.

Section 18. Amend Article IV, Section 4 of the Constitution of the State of Delaware by striking "and of the Orphans' Court" as that phrase appears therein.

Section 19. Amend Article IV, Section 5 of the Constitution of the State of Delaware by striking the phrase "and Orphans' Court" as it appears in the title of the Section, and by striking the phrase "and the Orphans' Court" as it appears twice therein.

Section 20. Amend Article IV, Section 6 of the Constitution of the State of Delaware by striking the phrase "and Orphans' Court" as it appears in the title of said Section, and by striking the phrase "and of the Orphans' Court" as it appears in the text.

Section 21. Amend Article IV, Section 8 of the Constitution of the State of Delaware by striking the phrase "and of the Orphans' Court" as it appears therein.

Section 22. Amend Article IV, of the Constitution of the State of Delaware by striking Section 9 in its entirety.

Section 23. Amend Article IV, Section 14 of the Constitution of the State of Delaware by striking the phrase "and of the Orphans' Court" as it appears therein.

Section 24. Amend Article IV, of the Constitution of the State of Delaware by striking Subsection (5) of Section 11 in its entirety; by deleting the phrase ", the Court of Chancery and the Orphans' Court" as found in Subsection (6) of Section 11 and replacing said phrase with the phrase "and the Court of Chancery"; and by renumbering all succeeding subsections accordingly.

Section 25. Amend Article IV, Section 18 of the Constitution of the State of Delaware by striking the phrase "and of the Orphans' Court" as it appears therein.

Section 26. Amend Article IV, Section 31 of the Constitution of the State of Delaware by striking the phrase "Orphans' Court" as it appears in the title and the fourth and fifth sentences of the Section, and inserting in each place the phrase "Court of Chancery".

Section 27. Amend Article IV, Section 32 of the Constitution of the State of Delaware by striking the

phrase "Orphans' Court" as it appears in the title and the second and third paragraphs, and inserting in each place the phrase "Court of Chancery".

Section 28. Amend Article IV, Section 34 of the Constitution of the State Of Delaware by striking the phrase "and of the Orphans' Court" as that phrase appears twice therein.

Section 29. Amend Article IV, Section 36 of the Constitution of the State of Delaware by striking Section 36 in its entirety."

WHEREAS, the said proposed amendment was adopted by two-thirds' of all members elected to each House of the 142nd General Assembly:

NOW THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. The said proposed amendment is hereby concurred in and adopted, and shall forthwith become a part of the Constitution of the State of Delaware.

SYNOPSIS

This is the second leg of a Constitutional Amendment. These Constitutional Amendments implement the recommendations of the Commission on Delaware Courts 2000 by providing for the inclusion of the Family Court and the Court of Common Pleas in the Court structure of the Constitution of the State of Delaware, and making the Judges in said Courts constitutional Judges. These amendments also delete references to the Orphans Court, which was abolished by a prior act of the General Assembly.

Author: Senator Vaughn

NOTICE

The Judicial Nominating Commission gives public notice that it has received notification from the Governor that the following offices can be filled by the appointment of the Governor with the concurrence of the Senate:

Judge of the Superior Court of the State of Delaware, New Castle County
(Due to the expiration of the term of the Honorable Peggy L. Abelman, who is not seeking reappointment)

There are requirements of political balance under the Delaware Constitution Art. IV § 3 and, in this case, the appointee must be a member of the Democratic Party. The appointee must be a citizen of the State of Delaware. The position provides a current annual salary of $180,233.

Judge of the Superior Court of the State of Delaware, New Castle County
(Due to the expiration of the term of the Honorable Joseph R. Slights III, who is not seeking reappointment)

There are requirements of political balance under the Delaware Constitution Art. IV § 3 and, in this case, the appointee must be a member of the Democratic Party. The appointee must be a citizen of the State of Delaware. The position provides a current annual salary of $180,233.

Two Judges of the Superior Court of the State of Delaware, New Castle County
(Due to the creation of two new positions by the 146th General Assembly)

There are requirements of political balance under the Delaware Constitution Art. IV § 3 and, in this case, at least one of the appointees must be a member of the Democratic Party and the other may be a member of the Republican Party. The appointee must be a citizen of the State of Delaware. The position provides a current annual salary of $180,233.

Commissioner of the Superior Court, New Castle County

(Due to the expiration of the term of the Honorable Lynne M. Parker, who is seeking reappointment)

There is a requirement of political balance under 10 Del. C. § 511(a) and, in this case, the appointee may be a member of either party. There also are requirements that the appointee be a resident of New Castle County and duly admitted to practice before the Supreme Court of the State of Delaware. The position provides a current annual salary of $111,275.

* * * * *

Persons who meet the legal qualifications of the offices described above are invited to file with the Commission a "Questionnaire for Nominees for Judicial Office." The form may be obtained from the Commission by calling (302) 573-3500 (extension 3522) and asking for Jennifer Speakman or can be downloaded online at http://courts.delaware.gov by going to the general information navigation tab at the top, clicking career opportunities and then clicking on "Questionnaire for Nominees for Judicial Office" under the heading for judicial officer postings. Any person desiring to suggest candidates is invited to write to the Commission.

Completed Questionnaires must be received no later than 12 noon, September 14, 2012, at the below-listed

address. Interviews of candidates will be scheduled thereafter.

On August 15, 2012, the Judicial Nomination Commission published a notice for five other judicial offices. Candidates who wish to apply for any of those offices and who wish to be considered for any of the offices set forth in this notice, do not need to submit a second application but must submit a letter to the below-listed address no later than 12 noon on September 14, 2012, (a) stating each of the offices for which they wish to be considered and (b) providing an updated response to Question No. 44 of the Questionnaire for each additional office for which the candidate is applying.

Judicial Nominating Commission
Andre G. Bouchard, Esquire, Chairman
c/o Bouchard Margules & Friedlander, P.A.
222 Delaware Avenue, Suite 1400
Wilmington, DE 19801

Dated: August 17, 2012

NOTICE

The Judicial Nominating Commission gives public notice that it has received notification from the Governor that the following office can be filled by the appointment of the Governor with the concurrence of the Senate:

Chief Justice of the Supreme Court of the State of Delaware
(Due to the retirement of
Chief Justice Myron T. Steele)

There are requirements of political balance under the Delaware Constitution Art. IV § 3 and, in this case, the appointee may be a member of either the Democratic Party or the Republican Party. The appointee must be a citizen of the State of Delaware and learned in the law. The position provides a current annual salary of $200,631.

Persons who meet the legal qualifications of the offices described above are invited to file with the Commission a "Questionnaire for Nominees for Judicial Office." The form may be obtained from the Commission by calling (302) 573-3500 (extension 3522) and asking for Jennifer Speakman or can be downloaded online at http://courts.delaware.gov by going to the general information navigation tab at the top, clicking career opportunities and then clicking on "Questionnaire for Nominees for Judicial Office" under the heading for judicial officer postings. Any person desiring to suggest candidates is invited to write to the Commission.

Completed Questionnaires must be received no later than 12 noon, November 5, 2013, at the below-listed address.

Judicial Nominating Commission
Andre G. Bouchard, Esquire, Chairman
c/o Bouchard Margules & Friedlander, P.A.
222 Delaware Avenue, Suite 1400
Wilmington, DE 19801

Dated: October 14, 2013

Connell, Ryan (DOJ)

From: dsba-bounces@barlist.delawlist.org on behalf of List Admin <administrator@dsba.org>
Sent: Wednesday, August 19, 2015 10:07 AM
To: dsba@delawlist.org
Subject: [DSBA] Notice of Judicial Vacancies
Attachments: ATT00001.txt

NOTICE

The Judicial Nominating Commission gives public notice that it has received notification from the Governor that the following offices may be filled by the appointment of the Governor with the concurrence of the Senate:

Vice Chancellor of the Court of Chancery of the State of Delaware
(Due to the retirement of Vice Chancellor Donald F. Parsons, Jr.)

There are requirements of political balance under Article IV, Section 3 of the Delaware Constitution but, in this case, the appointee may be a member of either party. The position provides a current annual salary of $180,733.

Judge of the Superior Court of the State of Delaware, New Castle County
(Due to the expiration of the term of The Honorable Mary M. Johnston, who is seeking reappointment)

There are requirements of political balance under Article IV, Section 3 of the Delaware Constitution, and in this case, the appointee must be a member of the Republican Party. The appointee must be a citizen of

the State of Delaware. The position provides a current annual salary of $180,733.

Judge of the Family Court of the State of Delaware, New Castle County

(Due to the expiration of the term of The Honorable Arlene M. Coppadge, who is seeking reappointment)

There are requirements of political balance under Article IV, Section 3 of the Delaware Constitution but, in this case, the appointee may be a member of either party. In addition, the appointee: (i) must reside in New Castle County; (ii) must be a resident of the State of Delaware for at least 5 years immediately preceding his or her appointment; and (iii) must be admitted to the practice of law before the Supreme Court of this State for period not less than 5 years prior to such appointment. The position provides a current annual salary of $180,733.

Chief Magistrate of the Justice of the Peace Courts of the State of Delaware

(Due to the expiration of the term of Chief Magistrate Alan, G. Davis, who is seeking reappointment)

There are no political balance requirements for this office. The position provides a current annual salary of $125,927.

Commissioner of the Family Court of the State of Delaware, New Castle County

(Due to the retirement of Commissioner Mary Ann Herlihy)

There are no political balance requirements for this office. Any applicant must be a resident of the State of Delaware for at least five years immediately preceding

his or her appointment. Non-incumbent applicants must be duly admitted to practice law before the Supreme Court of the State of Delaware. The position provides a current annual salary of $111,775.

****

Persons who meet the legal qualifications of the offices described above are invited to file with the Commission a "Questionnaire for Nominees for Judicial Office." The form may be obtained from the Commission by calling (302) 856-4235 and asking for Staci Hammonds or can be downloaded online at http://courts.delaware.gov by going to the general information navigation tab at the top, clicking career opportunities and then clicking on "Questionnaire for Nominees for Judicial Office" under the heading for judicial officer postings. Any person desiring to suggest candidates is invited to write to the Commission.

Completed Questionnaires must be received no later than **noon on Thursday, September 10, 2015** at the below-listed address. Interviews of candidates will be scheduled thereafter.

Judicial Nominating Commission
The Hon. William B. Chandler, III, Chairman
Eight West Laurel Street
Georgetown, DE 19947-1424

Dated: August 18, 2015

Connell. Ryan (DOJ)

From: doeLegal on behalf of DESCLMS Listsery (Delaware Courts) <notify_listservAttorneys@doelegal.com>
Sent: Wednesday, December 16, 2015 3:47 PM
To: Connell, Ryan (DOJ)
Subject: Notice of Vacancy
Importance: High

NOTICE

The Judicial Nominating Commission gives public notice that it has received notification from the Governor that the following office may be filled by the appointment of the Governor with the concurrence of the Senate:

Vice Chancellor of the Court of Chancery of the State of Delaware
(Due to the retirement of Vice Chancellor John W. Noble)

There are requirements of political balance under Article IV, Section 3 of the Delaware Constitution, but in this case, the appointee may be a member of either party. The appointee must be a resident of the State of Delaware. The position provides a current annual salary of $180,733.

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Persons who meet the legal qualifications of the office described above are invited to file with the Commission a "Questionnaire for Nominees for Judicial Office." The form may be obtained from the Commission by calling (302) 856-4235 and asking for Amy Garrahan or can be downloaded online at http://courts.delaware.gov by going to the general information navigation tab at the top, clicking career opportunities

and then clicking on "Questionnaire for Nominees for Judicial Office" under the heading for judicial officer postings. Any person desiring to suggest candidates is invited to write to the Commission.

Completed Questionnaires must be received no later than **12:00 noon on Friday, January 15, 2016** at the below-listed address. Interviews of candidates will be scheduled thereafter.

Judicial Nominating Commission
The Hon. William B. Chandler, III, Chairman
Eight West Laurel Street
Georgetown, DE 19947-1424

Dated: December 16, 2015

Connell. Ryan (DOJ)

From:	dsba-bounces@barlist.delawlist.org on behalf of List Admin <administrator@dsba.org>
Sent:	Tuesday, November 03, 2015 12:21 PM
To:	dsba@delawlist.org
Subject:	[DSBA] JNC: Notice of Vacancies re Superior Court Judge and Commission of Family Court
Attachments:	ATT00001.txt

NOTICE

The Judicial Nominating Commission gives public notice that it has received notification from the Governor that the following offices may be filled by the appointment of the Governor with the concurrence of the Senate:

Judge of the Superior Court of the State of Delaware, New Castle County
(Due to the retirement of
The Honorable Fred S. Silverman)

There are requirements of political balance under Article IV, Section 3 of the Delaware Constitution, and in this case, the appointee must be a member of the Democratic Party. The appointee must be a citizen of the State of Delaware. The position provides a current annual salary of $180,733.

Commissioner of the Family Court of the State of Delaware, Sussex County
(Due to the retirement of
The Honorable Pamela Holloway)

There are no political balance requirements for this office. Any applicant must be a resident of the State of Delaware for at least five years immediately preceding

his or her appointment and reside in Sussex County. Non-incumbent applicants must be duly admitted to practice law before the Supreme Court of the State of Delaware. The position provides a current annual salary of $111,775.

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Persons who meet the legal qualifications of the offices described above are invited to file with the Commission a "Questionnaire for Nominees for Judicial Office." The form may be obtained from the Commission by calling (302) 856-4235 and asking for Amy Garrahan or can be downloaded online at http://courts.delaware.gov by going to the general information navigation tab at the top, clicking career opportunities and then clicking on "Questionnaire for Nominees for Judicial Office" under the heading for judicial officer postings. Any person desiring to suggest candidates is invited to write to the Commission.

Completed Questionnaires must be received no later than **12:00 noon on Thursday, December 3, 2015** at the below-listed address. Interviews of candidates will be scheduled thereafter.

Judicial Nominating Commission
The Hon. William B. Chandler, III, Chairman
Eight West Laurel Street
Georgetown, DE 19947-1424

Dated: November 2, 2015

Connell. Ryan (DOJ)

From: doeLegal on behalf of DESCLMS Listsery (Delaware Courts) <notify_listservAttorneys@doelegal.com>
Sent: Monday, February 06, 2017 2:48 PM
To: Connell, Ryan (DOJ)
Subject: Notice of Judicial Vacancy
Attachments: 2017 - Superior - Witham - Reappointment-C1.docx

DELAWARE JUDICIAL NOMINATING COMMISSION

NOTICE OF VACANCY

The Judicial Nominating Commission gives public notice that it has received notification from the Governor that the following office may be filled by the appointment of the Governor with the concurrence of the Senate:

Resident Judge of the Superior Court of the State of Delaware, Kent County
(Due to the expiration of the term of the Honorable William L. Witham Jr., who is seeking reappointment)

There are requirements of political balance under Article IV, Section 3 of the Delaware Constitution, and in this case, the appointee must be a member of the Republican Party. In addition, the appointee must be a citizen of the State of Delaware and reside in Kent County. The position provides a current annual salary of $183,444.

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Persons who meet the legal qualifications of the offices described above are invited to file with the

Commission a completed copy of the "Questionnaire for Nominees for Judicial Office." A copy of the Questionnaire can also be obtained online at http://courts.delaware.gov/career/ under the "Judicial Officer Postings" heading. *Please note that the INC has published a revised version of the Questionnaire, dated March 30, 2016, that includes minor changes to some of the questions and revised instructions for submission, including a reduced number of required paper copies and a requirement to submit a copy of the application materials via email. If you have applied for previous judicial officer positions, please make sure your application reflects the most current version of the Questionnaire.* Any person desiring to suggest candidates is invited to write to the Commission. Any questions about the Questionnaire or the application process should be directed to the JNC Chair.

Completed Questionnaires must be received no later than **12:00 noon on Friday, February 24, 2017** at the below-listed address, with a copy of all application materials submitted via email to JNC@state.de.us. Interviews of candidates will be scheduled thereafter.

Judicial Nominating Commission
Attn: Gregory Brian Williams, Esq., Chairman
c/o Fox Rothschild LLP
Citizens Bank Center
919 North Market Street, Suite 300
Wilmington, DE 19899-2323
(302) 622-4211

Connell, Ryan (DOJ)

From: dsba-bounces@barlist.delawlist.org on behalf of List Admin <administrator@dsba.org>
Sent: Thursday, August 20, 2015 3:34 PM
To: dsba@delawlist.org
Subject: [DSBA] Notice of Judicial Vacancy
Attachments: ATT00001.txt

NOTICE

The Judicial Nominating Commission gives public notice that it has received notification from the Governor that the following office may be filled by the appointment of the Governor with the concurrence of the Senate:

Judge of the Family Court of the State of Delaware, New Castle County
(Due to the retirement of the Honorable William L. Chapman, Jr.)

There are requirements of political balance under Article IV, Section 3 of the Delaware Constitution but, in this case, the appointee may be a member of either party. In addition, the appointee: (i) must reside in New Castle County; (ii) must be a resident of the State of Delaware for at least 5 years immediately preceding his or her appointment; and (iii) must be admitted to the practice of law before the Supreme Court of this State for period not less than 5 years prior to such appointment. The position provides a current annual salary of $180,733.

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Persons who meet the legal qualifications of the offices described above are invited to file with the Commission a "Questionnaire for Nominees for Judicial

Office." The form may be obtained from the Commission by calling (302) 856-4235 and asking for Staci Hammonds or can be downloaded online at http://courts.delaware.gov by going to the general information navigation tab at the top, clicking career opportunities and then clicking on "Questionnaire for Nominees for Judicial Office" under the heading for judicial officer postings. Any person desiring to suggest candidates is invited to write to the Commission.

Completed Questionnaires must be received no later than **noon on Thursday, September 10, 2015** at the below-listed address. Interviews of candidates will be scheduled thereafter.

Judicial Nominating Commission
The Hon. William B. Chandler, III, Chairman
Eight West Laurel Street
Georgetown, DE 19947-1424

Dated: August 19, 2015

Connell, Ryan (DOJ)

From: dsba-bounces@barlist.delawlist.org on behalf of List Admin <administrator@dsba.org>

Sent: Monday, November 02, 2015 10:55 AM

To: dsba@delawlist.org

Subject: [DSBA] JNC Notice of Vacancy

Attachments: ATT00001.txt

NOTICE

The Judicial Nominating Commission gives public notice that it has received notification from the Governor that the following office may be filled by the appointment of the Governor with the concurrence of the Senate:

Judge of the Family Court of the State of Delaware, New Castle County
(Due to the death of the Honorable Alan N. Cooper)

There are requirements of political balance under Article IV, Section 3 of the Delaware Constitution but, in this case, the appointee may be a member of either party. In addition, the appointee: (i) must reside in New Castle County; (ii) must be a resident of the State of Delaware for at least 5 years immediately preceding his or her appointment; and (iii) must be admitted to the practice of law before the Supreme Court of this State for period not less than 5 years prior to such appointment. The position provides a current annual salary of $180,733.

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Persons who meet the legal qualifications of the offices described above are invited to file with the Commission a "Questionnaire for Nominees for Judicial Office." The form may be obtained from the Commission by calling (302) 856-4235 and asking for Amy Garrahan or can be downloaded online at http://courts.delaware.gov by going to the general information navigation tab at the top, clicking career opportunities and then clicking on "Questionnaire for Nominees for Judicial Office" under the heading for judicial officer postings. Any person desiring to suggest candidates is invited to write to the Commission.

****Due to the unexpected occurrence of this vacancy, the Judicial Nominating Commission has agreed to conduct a modified and expedited selection process. The JNC will accept applications on an expedited basis from applicants who did not apply for the position of Family Court Judge in September 2015. Candidates who submitted an application for either of the two Family Court Judge positions in September 2015 will automatically be considered for this position and do not need to submit an application for this vacancy. The JNC does not intend to re-interview these candidates.** ***Any candidate who applied for a Family Court Judge position in September 2015 but does not wish to be considered for this vacancy should notify the Judicial Nominating Commission in writing on or before the due date listed below.***

Completed Questionnaires for candidates who did not submit an application for Family Court Judge in September 2015 must be received no later than **5:00 p.m. on Thursday, November 5, 2015** at the below-

listed address. Interviews of candidates will be scheduled thereafter.

Judicial Nominating Commission
The Hon. William B. Chandler, III, Chairman
Eight West Laurel Street
Georgetown, DE 19947-1424

Dated: October 30, 201

Connell, Ryan (DOJ)

From: doeLegal on behalf of DESCLMS Listsery (Delaware Courts) <notify_listservAttorneys@doelegal.com>
Sent: Wednesday, November 23, 2016 2:45 PM
To: Connell, Ryan (DOJ)
Subject: Notice of Judicial Vacancy Posting
Attachments: 2016-11-23 JNC Notice of Vacancy– Family Court (Waserstein)-C2.docx

DELAWARE JUDICIAL NOMINATING COMMISSION

NOTICE OF VACANCY

The Judicial Nominating Commission gives public notice that it has received notification from the Governor that the following office may be filled by the appointment of the Governor with the concurrence of the Senate:

Judge of the Family Court of the State of Delaware, New Castle County
(Due to the retirement of the Honorable Aida Waserstein)

There are requirements of political balance under Article IV, Section 3 of the Delaware Constitution but in this case, the appointee may be a member of either party. In addition, the appointee: (i) must reside in New Castle County; (ii) must be a resident of the State of Delaware for at least 5 years immediately preceding his or her appointment; and (iii) must be admitted to the practice of law before the Supreme Court of this State for period of not less than 5 years prior to such appointment. The position provides a current annual salary of $183,444.

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Persons who meet the legal qualifications of the office described above are invited to file with the Commission a completed copy of the "Questionnaire for Nominees for Judicial Office." A copy of the Questionnaire can also be obtained online at http://courts.delaware.gov/career/ under the "Judicial Officer Postings" heading. Please note that the JNC has published a revised version of the Questionnaire, dated March 30, 2016, that includes minor changes to some of the questions and revised instructions for submission, including a reduced number of required paper copies and a requirement to submit a copy of the application materials via email. If you have applied for previous judicial officer positions, please make sure your application reflects the most current version of the Questionnaire. Any person desiring to suggest candidates is invited to write to the Commission. **Any questions about the Questionnaire or the application process should be directed to the JNC Chair, NOT to the JNC@state.de.us email address.**

Completed Questionnaires must be received no later than 12:00 noon on Wednesday, December 14, 2016 at the below-listed address, with a copy of all application materials submitted via email to JNC@state.de.us. Interviews of candidates will be scheduled thereafter.

Judicial Nominating Commission
Attn: Gregory Brian Williams, Esq., Chairman
c/o Fox Rothschild LLP
Citizens Bank Center
919 North Market Street, Suite 300
Wilmington, DE 19899-2323
(302) 622-4211

Dated: November 23, 2016

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

C. A. No. 17-181-MPT

JAMES R. ADAMS,

Plaintiff,

v.

THE HON. JOHN CARNEY
Governor of the State of Delaware,

Defendant.

JUDGMENT ORDER

Consistent with the reasoning contained in the Memorandum Opinion of December 6, 2017, IT IS ORDERED and ADJUDGED that plaintiff's motion for summary judgment (D.I. 31) is GRANTED, and defendant's motion for summary judgment (D.I. 28) is DENIED.

Dated: December 6, 2017

/s/ Mary Pat Thynge
Chief U.S. Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

C. A. No. 17-181-MPT

JAMES R. ADAMS,

Plaintiff,

v.

THE HON. JOHN CARNEY
Governor of the State of Delaware,

Defendant.

MEMORANDUM OPINION

David L. Finger, Esq., Finger & Slanina, LLC, One Commerce Center, 1201 North Orange Street, 7th Floor, Wilmington, DE 19801.

Attorney for Plaintiff James R. Adams.

Christian D. Wright, Department of Justice Civil Division, 820 North French Street, 8th Floor, Wilmington, DE 19801.

Attorney for Defendant the Honorable John Carney, Governor of the State of Delaware.

Ryan Patrick Connell, Department of Justice State of Delaware, Carvel Office Building, 820 North French Street, 8th Floor, Wilmington, DE 19801.

Attorney for Defendant the Honorable John Carney, Governor of the State of Delaware.

I. INTRODUCTION

Plaintiff, James R. Adams, filed this Declaratory Judgment and Injunctive Relief action under 42 U.S.C. § 1983, in relation to Article IV, § 3 of the Constitution of the State of Delaware, against the Governor of the State of Delaware, John Carney on February 21, 2017.[1] Plaintiff seeks review of the constitutionality of the provision, commonly referred to as the "Political Balance Requirement," which prohibits any political party to comprise more than a "bare majority" of the seats in the Supreme Court or Superior Court, or in the Supreme Court, Superior Court, and Court of Chancery combined.[2] The provision also requires that the remaining seats be comprised of members of the "other major political party."[3]

Presently before the court are the parties' cross-motions for summary judgment, filed on September 29, 2017.[4] Plaintiff, in his motion, contends Article IV, § 3 of the Constitution of the State of Delaware's "Political Balance Requirement" restricts governmental employment based on political affiliation, which violates the First Amendment of the Constitution of the United States.[5] Defendant claims that plaintiff failed to establish standing under Article III, § 2 of the Constitution of the United States,[6] and/or contends the position of judge is a "policymaking position," which

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[1] D.I. 1; *see also* D.I. 10 (amended compliant filed on March 10, 2017).

[2] Del. Const. Art. IV, § 3.

[3] *Id.*

[4] *See* D.I. 28; D.I. 31.

[5] D.I. 32 at 2.

[6] U.S. const. Art. III, § 2.

falls under the well established exception to the restriction of governmental employment based on political affiliation.[7] For the reasons stated herein, the court grants plaintiff's motion for summary judgment, and denies defendant's motion for summary judgment.

II. BACKGROUND

Article IV, § 3 of the Constitution of the State of Delaware was amended to its present language in 1897 to provide the requirements and limitations associated with judicial appointment.[8] The pertinent section reads:

> Appointments to the office of the State Judiciary shall at all times be subject to all of the following limitations:
>
> First, three of the five Justices of the Supreme Court in office at the same time, shall be of one major political party, and two of said Justices shall be of the other major political party.
>
> Second, at any time when the total number of Judges of the Superior Court shall be an even number not more than one-half of the members of all such offices shall be of the same political party; and at any time when the number of such offices shall be an odd number, then not more than a bare majority of the members of all such offices shall be of the same major political party, the remaining members of such offices shall be of the other major political party.

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[7] D.I. 29 at 3.

[8] D.I. 30 at A-80-84.

> Third, at any time when the total number of the offices of the Justices of the Supreme Court, the Judges of the Superior Court, the Chancellor and all the Vice-Chancellors shall be an even number, not more than one-half of the members of all such offices shall be of the same major political party; and at any time when the total number of such offices shall be an odd number, then not more than a bare majority of the members of all such offices shall be of the same major political party; the remaining members of the Courts above enumerated shall be of the other major political party.
>
> Fourth, at any time when the total number of Judges of the Family Court shall be an even number, not more than one-half of the Judges shall be of the same political party; and at any time when the total number of Judges shall be an odd number, then not more than a majority of one Judge shall be of the same political party.
>
> Fifth, at any time when the total number of Judges of the Court of Common Pleas shall be an even number, not more than one-half of the Judges shall be of the same political party; and at any time when the total number of Judges shall be an odd number, then not more than a majority of one Judge shall be of the same political party.[9]

This provision effectively creates a few limitations: first, it demands three of the Delaware Supreme Court

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[9] Del. Const. Art. IV, § 3.

Justices be from "one major political party,"[10] and the other two be from the "other major political party;"[11] second, at no time may the Delaware Superior Court or the Delaware Supreme Court, Superior Court, and Court of Chancery combined, have more than a "bare majority" be comprised of the same "major political party," and the remainder positions must be of the "other major political party;"[12] and third, in the Family Courts and the Courts of Common Pleas, one political party may never possess more than a one judge majority.[13]

Defendant, as Governor of the State of Delaware, is responsible for appointing judges in compliance with Article IV, § 3 of the Constitution of the State of Delaware.[14] In 1977, a Judicial Nominating Commission was created by executive order to identify highly qualified candidates.[15] To fulfill this role, the Commission provides notice for existing judicial vacancies.[16] The required party affiliation is listed within the notice, as "must be a member of the [Democratic or Republican] party," when necessary because of Delaware's

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[10] Major political party is defined as "any political party which, as of December 31, of the year immediately preceding any general election year, has registered in the name of that party voters equal to at least five percent of the total number of voters registered in the State." 15 Del. C. § 101(15).

[11] *Id*.

[12] Del. Const. Art. IV, § 3.

[13] *Id.*

[14] Del. Const. Art. IV, § 3.

[15] D.I. 32 at 3.

[16] D.I. 30 at A-107-17.

constitutional limitations.[17] The Committee then provides a list of qualified candidates to defendant for selection.[18]

Plaintiff is a graduate of Ursinus College and Delaware Law School.[19] He is a resident of New Castle County and a member of the Delaware bar.[20] Plaintiff worked in multiple positions before retiring from the Department of Justice on December 31, 2015.[21] After retirement, he remained on emeritus status from the bar before returning to active status in 2017.[22] Until February 13, 2017, plaintiff was registered as affiliated with the Democratic party.[23] Plaintiff, during that time, applied for one position, Family Court Commissioner.[24] Now plaintiff is registered as an independent voter.[25] On February 14, 2017, the Judicial Nominating Commission released a Notice of Vacancy calling for a Republican candidate in the Superior Court of Kent County, following the retirement of the Honorable Robert Young.[26] On March 20, 2017, the Judicial Nominating Commission also sent a Notice of Vacancy fol-

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[17] *Id.*

[18] *Id.*

[19] D.I. 10 at 1.

[20] *Id.*

[21] *Id.* at 1-2.

[22] *Id.* at 4.

[23] D.I. 30 at A-55.

[24] Plaintiff was not selected for the Commissioner position, but such positions are not subjected to the "Political Balancing Requirement" under the Delaware Constitution. D.I. 37 at 1.

[25] D.I. 30 at A-55.

[26] D.I. 1 at Ex. A.

lowing the retirement of the Honorable Randy Holland, which required a qualified Republican candidate for the Delaware Supreme Court.[27] Plaintiff, as an unaffiliated voter, was barred from applying to either position. Plaintiff's amended complaint was filed shortly thereafter on April 10, 2017, to which defendant responded on April 24, 2017.[28]

III. STANDARD OF REVIEW

A motion for summary judgment should be granted where the court finds no genuine issues of material fact from its examination of the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, and that the moving party is entitled to judgment as a matter of law.[29] A party is entitled to summary judgment where "the record, taken as a whole, could not lead a rational trier of fact to find for the non-moving party or where the facts are not disputed and there is no genuine issue for trial."[30]

This standard does not change merely because there are cross-motions for summary judgment.[31] Cross-motions for summary judgment are no more than a claim by each side that it alone is entitled to summary judgment, and the making of such inherently contradictory claims does not constitute an agreement that if one is rejected the other is necessarily justified or

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[27] D.I. 10 at 4.

[28] *See id.*; D.I. 13.

[29] *Ford v. Unum Life Ins. Co. of Am.*, 465 F. Supp. 2d 324, 330 (D. Del. 2006).

[30] *Delande v. ING Emp. Benefits*, 112 F. App'x 199, 200 (3d Cir. 2004).

[31] *Appleman's v. City of Philadelphia*, 826 F.2d 214, 216 (3d Cir. 1987).

that the losing party waives judicial consideration and determination whether genuine issues of material fact exist.[32]

Moreover, "[t]he filing of cross-motions for summary judgment does not require the court to grant summary judgment for either party."[33]

IV. ANALYSIS

A. Defendant's Motion for Summary Judgment Based on Plaintiff's Lack of Standing for Failure to Show Injury in Fact.

For plaintiff to demonstrate standing, there must be a showing of: (1) an injury in fact, (2) with a traceable connection to the challenged action, and (3) the requested relief will redress the alleged injury.[34] Three principals that must be considered in a standing analysis are that a party must litigate his own rights and not those of a third-party, the issue must not be an abstract or generalized grievance, and the harm must be in the zone of interest protected by the statute or constitutional provision at issue.[35] Plaintiff must show he is likely to experience actual future injury.[36] In addi-

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[32] *Rains v. Cascade Indus., Inc.*, 402 F.2d 241, 245 (3d Cir. 1968).

[33] *Krups v. New Castle County*, 732 F. Supp. 497, 505 (D. Del. 1990).

[34] *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 103 (1998).

[35] *Valley Forge Christian Coll. v. Ams. United for the Separation of Church and State*, 454 U.S. 464, 474-75 (1982).

[36] *Voneida v. Pennsylvania*, 508 F. App'x 152, 156 (3d Cir. 2012).

tion, plaintiff is not required to engage in futile gestures to establish standing.[37]

In the standing analysis, there are two parts of Article IV, § 3 of the Constitution of the State of Delaware involved: provisions one through three, which contain the term "other political party," and provisions four and five, which only include a bare minimum requirement.[38] Defendant alleges that plaintiff has no standing because he fails to demonstrate an "actual and immediate threat of future injury" and/or a "concrete and particularized threat of future injury."[39]

Plaintiff does not have standing under provisions four and five. He has not applied for a judicial position in any of Family Courts or the Courts of Common Pleas.[40] In addition, plaintiff's applications for these positions would not have been futile, because there is no party requirement constitutionally attached to either court.[41] The only constitutional restriction on these courts is that "not more than a majority of one Judge shall be of the same political party."[42]

As for provisions one through three, which contain the "other political party" requirement, defendant fails to demonstrate that plaintiff does not have the

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[37] *Sammon v. N.J. Bd. of Med. Exam'rs*, 66 F.3d 639 (3d Cir. 1995).

[38] Del. Const. Art. IV, § 3.

[39] D.I. 29 at 12, 15.

[40] Although plaintiff applied for Family Court Commissioner in 2009 and was not selected, he does not contend this occurred due to the reasons asserted in his compliant. D.I. 30 at A-08-09.

[41] *See* Del. Const. Art. IV, § 3; D.I. 30 at A-110-16.

[42] Del. Const. Art. IV, § 3.

requisite standing. Plaintiff alleged that if he were permitted to apply as an independent, he would apply for a position on either the Delaware Superior Courts or the Delaware Supreme Court.[43] As an unaffiliated voter, he is barred from applying and any such application would be futile.[44] As a result, an actual, concrete, and particularized threat of present and future injury to plaintiff is demonstrated.[45]

B. Whether a Judge is a Policymaking Position, That is an Exception to the Right of Political Affiliation in Employment Decisions.

The United States Supreme Court has established that political belief and association are at the core of First Amendment protections.[46] Governmental employees can not be terminated or asked to relinquish their "right to political association at the price of holding a job."[47] "Patronage . . . to the extent that it compels or

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[43] D.I. 10 at 4; *see Nat'l Ass'n for the Advancement of Multijurisdiction Practice, (NAAMJP) v. Simandle*, 658 Fed. Appx. 127, 133 (3d Cir. 2016) (The plaintiffs "alleged that they would seek admission to the District Court bar if the rules were changed to permit their admission. Since denial of their application was assured, the rules inflict the alleged injury regardless of whether [the plaintiffs] actually undertook the futile application.").

[44] Del. Const. Art. IV, § 3 (provision one, concerning the Delaware Supreme Court, requires "two of said Justices shall be of the other major political party," and provision two, regarding the Delaware Superior Courts, requires "the remaining members of such offices shall be of the other major political party").

[45] *Valley Forge Christian Coll. v. Ams. United for the Separation of Church and State*, 454 U.S. 464, 474-75 (1982).

[46] *Elrod v. Burns*, 427 U.S. 347, 356 (1976) (plurality opinion).

[47] *Id.* at 356-57.

restrains belief and association, is inimical to the process which undergirds our system of government and is at war with the deeper traditions of democracy embodied in the First Amendment."[48] This right of political affiliation has been expanded to government employees regarding their promotion, transfer, and hiring.[49]

The "prohibition on encroachment of First Amendment protections is not absolute," and an exception is recognized, which limits patronage dismissals to "policymaking positions," and requires an analysis of the nature of the employee's responsibilities.[50] The United States Court of Appeals for the Third Circuit has found "a question relevant in all cases is whether the employee has meaningful input into decision making concerning the nature and scope of a major government program."[51] A "policymaking position" is a narrow exception applied when "the hiring authority can demonstrate that party affiliation is an appropriate requirement for the effective performance of the public office involved."[52]

The Court has recognized that "it is not always easy to determine whether a position is one in which political affiliation is a legitimate factor to be consid-

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[48] *Id.* at 357; *see also Branti v. Finkel*, 445 U.S. 507, 512-18 (1980) (the majority of the court reaffirming the opinion established in *Elrod*).

[49] *Rutan v. Republican Party of Ill.*, 497 U.S. 62, 64, 75-80 (1990).

[50] *Elrod*, 427 U.S. at 360, 367.

[51] *Peters v. Del. River Port Auth. of Pa. and N.J.*, 16 F.3d 1346, 1353 (3d Cir. 1994) (internal citations omitted).

[52] *Branti*, 445 U.S. at 518.

ered."[53] In *Branti v. Finkel*, the United States Supreme Court held that the position of Assistant Public Defender was not entitled to the "policymaker" exception.[54] It found that the factors to be considered in determining whether a position is a policymaking position are whether the position is simply clerical, nondiscretionary or technical in nature, whether the employee "participates in Council discussions, or other meetings, whether the employee prepares budgets, or has authority to hire or fire employees, the salary of the employee, and the employee's power to control others and to speak in the name of policymakers."[55] A difference in political affiliation is only a proper factor in making employee decisions if it is highly likely "to cause an official to be ineffective in carrying out the duties and responsibilities of the office."[56] Whether a position involves policy making is a question of law.[57]

Defendant contends that the role of the judiciary falls within the policymaker exception under the precedent of *Elrod* and *Branti*.[58] Defendant's argument rests heavily upon the holdings by other circuit courts

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[53] *Id.*

[54] "His principal responsibility is to serve the undivided interests of his client. Indeed, an indispensable element of the effective performance of his responsibilities is the ability to act independently of the government and to oppose it in adversary litigation." *Id.* at 519 (quoting *Ferri v. Ackerman*, 444 U.S. 193, 204 (1979)).

[55] *Brown v. Trench*, 787 F.2d 167, 169 (3d Cir. 1986).

[56] *Waskovich v. Morgano*, 2 F.3d 1292, 1297 (3d Cir. 1993).

[57] *St. Louis v. Proprotnik*, 485 U.S. 112, 126 (1988).

[58] *See* D.I. 29 at 20.

outside the Third Circuit,[59] and the United States Supreme Court's holding in *Gregory v. Ashcroft*.[60] Plaintiff contends that the role of the judiciary is not a policymaking position and rests his argument upon a separation of powers, the role of the judiciary, and the Delaware Judges' Code of Judicial Conduct.[61]

The judiciary, although a very important role, is not a policymaking position. A judge does not provide "meaningful input into decision making concerning the nature and scope of a major government program."[62] To the contrary a judge's role is "to apply, not amend, the work of the People's representatives."[63] The court may not speak on policymakers behalf, sit in on Congressional discussions, or participate in policymaking meetings.[64] The role of the judiciary is not to "hypothesize independently" legislative decision and intent.[65] "Matters of practical judgment and empirical calculation are for Congress" and the judiciary has "no

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[59] *See Newman v. Voinovich*, 986 F.2d 159 (6th Cir. 1993) (Judges are "policymakers," whose political affiliations may be considered during the appointment process); *Kurowski v. Krajewski*, 848 F.2d 767 (7th Cir. 1988) (Governor was entitled to consider judge's political affiliation in making a temporary appointment).

[60] *See* D.I. 29 at 20; *Gregory v. Ashcroft*, 501 U.S. 452, 466 (1991) (finding that legislative intent was not clear as to whether the language "appointee on the policymaking level," included the judiciary).

[61] D.I. 32 at 8-19.

[62] *Peters v. Del. River Port Auth. of Pa. and N.J.*, 16 F.3d 1346, 1353 (3d Cir. 1994) (internal citations omitted).

[63] *Hayes v. Harvey*, 874 F.3d 98, 111 (3d Cir. 2017) (citing *Henson v. Consumer USA Inc.*, 137 S. Ct. 1718, 1726 (2017)).

[64] *Brown*, 787 F.2d at 169.

[65] *Matthew v. Lucas*, 427 U.S. 495, 515 (1976).

basis to question their detail beyond the evident consistency and substantiality."[66] Statutory interpretation, not statutory creation, is the responsibility of the judiciary and therefore, the position of judge is not a policymaking position.

Cases from other circuits, on which defendant relies, are distinguishable.[67] Both *Newman* and *Kurowski* addressed situations which political affiliation could be considered, but was not constitutionally mandated.[68] Neither case dealt with a constitutional provision requiring a political affiliation evaluation, nor a complete bar on hiring individuals with minority political party beliefs. In addition, the Court in *Gregory* addressed the issue of interpreting legislative intent of an exception as it applied to the Age Discrimination in Employment Act for positions "on the policymaking level."[69] The Court addressed whether Congress intended the judiciary be included in the exception, and whether a Missouri law mandating that members of the judiciary retire at the age seventy was permissible under the Age Discrimination in Employment Act.[70] The Court specifically did not decide the issue of whether the judiciary was a policymaker, and based its holding on the rationale that "people . . . have a legitimate, indeed compelling, interest in maintaining

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[66] *Id.* at 515-16.

[67] D.I. 29 at 20.

[68] *See Newman*, 986 F.2d at 159-60 (in the appointment of interim judges, Governor considered candidates based on recommendations from Republican Chairpersons); *Kurowski*, 848 F.2d at 769 (political affiliation could be considered by court when assigning judges *pro tempore*).

[69] *Gregory*, 501 U.S. at 455-57.

[70] *Id.* at 455-64.

a judiciary fully capable of performing the demanding tasks that judges must perform. It is an unfortunate fact of life that physical and mental capacity sometimes diminish with age. The people may therefore wish to replace some older judges."[71] Thus, the phrase "on the policymaking level" is not the equivalent of a "policymaking" position, on which employment decisions based on political affiliation may be made.

Delaware requirements are clear, that "[a] judge should be unswayed by partisan interest" and "family, social, or other relationships" should not influence their conduct or judgment."[72] In particular, Canon Four of the Delaware Judges' Code of Judicial Conduct specifically addresses that the judiciary must refrain from political activity.[73] A judge may not act as a "leader or hold any office in a political organization," make speeches for political organizations or candidates, or "engage in any other political activity."[74] The Delaware Judicial Code clearly pronounces that political affiliation should not affect the position.[75]

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[71] *Id.* at 472.

[72] Del. Judges' Code Judicial Conduct Rule 2.4 (A)-(B).

[73] *See* Del. Judges' Code Judicial Conduct Canon 4.

[74] *Id.* at Rule 4.1 (A), (C) (with an exception for activities "on behalf of measures to improve the law, the legal system or the administration of justice").

[75] *See Leatherbury v. Greenspun*, 939 A.2d 1284, 1292 (Del. 2007) ("Judges must take the law as they find it, and their personal predilections as to what the law should be have no place in efforts to override properly stated legislative will."); *Ewing v. Beck*, 1986 WL 5143, at *2 (Del. Ch. 1986) ("It is a settled principle that courts will not engage in 'judicial legislation' where the statute in question is clear and unambiguous.").

Political affiliation is not important to the effective performance of a Delaware judge's duties.[76] A Delaware judge may not participate in political activities, hold any office in a political organization, or allow political affiliation to influence his judgment on the bench.[77] Since political affiliation in Delaware cannot "cause an official to be ineffective in carrying out the duties and responsibilities of the office," it does not meet the standard for a "policymaking position."[78]

Article IV, § 3 of the Constitution of the State of Delaware violates the First Amendment by placing a restriction on governmental employment based on political affiliation in the Delaware judiciary. The narrow exception of political affiliation does not apply because the role of the judiciary is to interpret statutory intent and not to enact or amend it.[79] Precedent relied upon by defendant is highly distinguishable and not applicable to the current situation.[80] Further, the Delaware Judges' Code of Judicial Conduct clearly indicates that political affiliation is not a valued trait of an effective judiciary.[81]

As a result of the findings herein, plaintiff's motion for summary judgment (D.I. 31) is granted, and

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[76] *Branti v. Finkel*, 445 U.S. 507, 518 (1980).

[77] Del. Judges' Code Judicial Conduct Rule 2.4 (B); 4.1 (A)(1), (C).

[78] *Waskovich v. Morgano*, 2 F.3d 1292, 1297 (3d Cir. 1993).

[79] *Hayes v. Harvey*, 874 F.3d 98, 111 (3d Cir. 2017) (citing *Henson v. Consumer USA Inc.*, 137 S. Ct. 1718, 1726 (2017)).

[80] *See Newman v. Voinovich*, 986 F.2d 159, 159-60 (6th Cir. 1993); *Kurowski v. Krajewski*, 848 F.2d 767, 769 (7th Cir. 1988); *Gregory*, 501 U.S. at 455-64.

[81] *See* Del. Judges' Code Judicial Conduct Canon 4.

defendant's motion for summary judgment (D.I. 28) is denied. An appropriate Order shall follow.

Dated: December 6, 2017

/s/ Mary Pat Thynge _____
Chief U.S. Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

C.A. No. 17-181 MPT

JAMES R. ADAMS,

Plaintiff,

v.

THE HON. JOHN CARNEY,
Governor of the State of Delaware,

Defendant.

NOTICE OF APPEAL

Notice is hereby given that the Honorable John Carney, Defendant in the above-captioned action, hereby appeals to the United States Court of Appeals for the Third Circuit from the Judgment entered in this action on December 6, 2017 (D.I. 39), granting Plaintiff's Motion for Summary Judgment and denying Defendant's Motion for Summary Judgment for the reasons set forth in the Memorandum Opinion entered that same date (D.I. 40).

YOUNG CONAWAY STARGATT & TAYLOR, LLP

Dated: January 5, 2018

/s/ *Pilar G. Kraman*
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The Hon. John Carney

CERTIFICATE OF SERVICE

I, Pilar G. Kraman, hereby certify that on January 5, 2018, I caused to be electronically filed a true and correct copy of the foregoing document with the Clerk of the Court using CM/ECF, which will send notification that such filing is available for viewing and downloading to the following counsel of record:

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Attorneys for Plaintiff

I further certify that on January 5, 2018**,** I caused the foregoing document to be served via electronic mail upon the above-listed counsel.

Dated: January 5, 2018

YOUNG CONAWAY STARGATT & TAYLOR, LLP

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EXHIBIT A

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February 1, 2018

PERSONAL AND CONFIDENTIAL
BY ELECTRONIC AND FIRST CLASS MAIL

James R. Adams, Esq.
465 Gum Bush Road
Townsend, DE 19734
Jadamslaw1@aol.com

Re: Application for Judicial Appointment
Superior Court, New Castle County

Dear Jim:

On behalf of the Judicial Nominating Commission ("JNC"). I would like to thank you for applying for the position of Judge of the Superior Court of the State of Delaware. I regret to inform you that the INC will not be forwarding your name to Governor Carney as a prospective nominee for the position at this time.

The JNC gave careful and thorough consideration to your application and had some tough decisions to make in selecting the applicants to be forwarded to Governor Carney for consideration. The election of judicial candidates is a difficult task, particularly

when there are a number of well-qualified and distinguished applicants for the same position.

The JNC appreciates your interest in serving the citizens of Delaware as a judicial officer and your participation in the application process. Best wishes in your future endeavors.

Sincerely,

[/s/ Arthur G. Connolly, III]
Arthur G. Connolly, III
Acting Chair,
Judicial Nominating Commission

[LOGO]

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May 8, 2018

PERSONAL AND CONFIDENTIAL
BY ELECTRONIC AND FIRST CLASS MAIL

James R. Adams, Esq.
465 Gum Bush Road
Townsend. DE 19734
jadamslawl@aol.com

Re: Application for Judicial Appointment
Court of Common Pleas, New Castle County

Dear Mr. Adams:

On behalf of the Judicial Nominating Commission ("JNC"), I would like to thank you for applying for the position of Judge of the Court of Common Pleas of the State of Delaware. I regret to inform you that the JNC will not be forwarding your name to Governor Carney as a prospective nominee for the position at this time.

The JNC gave careful and thorough consideration to your application and had some tough decisions to make in selecting the applicants to be forwarded to Governor Carney for consideration. The election of judicial candidates is a difficult task. particularly when there are a number of well-qualified and distinguished applicants for the same position.

The JNC appreciates your interest in serving the citizens of Delaware as a judicial officer and your participation in the application process. Best wishes in your future endeavors.

Sincerely,

[/s/ William Bowser]
William Bowser
Chair, Judicial Nominating Commission

WB: jbm

cc: Arthur G. Connolly, Ill. Esq.,
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

C.A. No. 17-181 MPT

JAMES R. ADAMS,

Plaintiff,

v.

THE HON. JOHN CARNEY,
Governor of the State of Delaware,

Defendant.

AMENDED NOTICE OF APPEAL

Notice is hereby given that the Honorable John Carney, Defendant in the above-captioned action, hereby appeals to the United States Court of Appeals for the Third Circuit from the:

1. Judgment entered in this action on December 6, 2017 (D.I. 39), granting Plaintiff's Motion for Summary Judgment and denying Defendant's Motion for Summary Judgment for the reasons set forth in the Memorandum Opinion entered that same date (D.I. 40);

2. Revised Judgment entered in this action on May 23, 2018, granting Plaintiff's Motion for Summary Judgment and denying Defendant's Motion for Summary Judgment for the reasons set forth in the Memorandum Opinion Clarifying the Court's Opinion Issued December 6, 2017 (D.I. 61, 62); and

3. Memorandum Order denying Defendant's Motion for Reconsideration/Clarification (D.I. 60).

Dated: June 20, 2018

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ *Pilar G. Kraman*
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Martin S. Lessner (No. 3109)
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CERTIFICATE OF SERVICE

I, Pilar G. Kraman, hereby certify that on June 20, 2018, I caused to be electronically filed a true and correct copy of the foregoing document with the Clerk of the Court using CM/ECF, which will send notification that such filing is available for viewing and downloading to the following counsel of record:

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Attorneys for Plaintiff

I further certify that on June 20, 2018**,** I caused the foregoing document to be served via electronic mail upon the above-listed counsel.

Dated: June 20, 2018

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Pilar G. Kraman

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Attorneys for Defendant,
The Hon. John Carney

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

C. A. No. 17-181-MPT

JAMES R. ADAMS,

Plaintiff,

v.

HONORABLE JOHN CARNEY,
Governor of the State of Delaware

Defendant.

MEMORANDUM ORDER

I. INTRODUCTION

Presently before the court are two motions by defendant, the Hon. John Carney, Governor of Delaware ("defendant" or "Mr. Carney").[1] The court has discussed the facts of the case at bar elsewhere in recent orders, and will not repeat them herein.[2] On December 6, 2017, in a Memorandum Opinion[3] and Order,[4] the court granted summary judgment to plaintiff, James R. Adams ("plaintiff' or "Mr. Adams") and denied Mr. Carney's motion for summary judgment.[5] Shortly thereafter, Mr. Carney moved for reconsideration or clarification (the "First Motion for Reconsideration").[6]

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[1] D.I. 63

[2] D.I. 65; D.I. 60.

[3] D.I. 40.

[4] D.I. 39.

[5] *Id.*

[6] D.I. 42.

While the First Motion for Reconsideration was pending, on January 5, 2018, Mr. Carney filed a Notice of Appeal with the United States Court of Appeals for the Third Circuit, seeking review of the court's grant of summary judgment.[7] In May 2018, the court addressed several pending motions, including Mr. Carney's First Motion for Reconsideration. At the time, Mr. Carney failed to demonstrate any of the factors relevant to the grant of reconsideration.[8] In addition, the court concluded that Mr. Carney was making a new "argument that [he] did not make in [his] briefing on summary judgment[]" and that this new argument was specifically related to an argument, made by plaintiff in his answering brief in opposition to defendant's motion for summary judgment, that Mr. Carney did not acknowledge, discuss, mention, reference, or attempt to rebut in his reply brief.[9] Therefore, on May 23, 2018, the court denied the First Motion for Reconsideration.[10] On the same day, the court issued a Memorandum Opinion Clarifying the Court's Opinion Issued December 6, 2017[11] accompanied by an Order

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[7] D.I. 50. Defendant also sought review of the court's denial of his motion for summary judgment. *Id.*

[8] D.I. 60 at 8–9.

[9] *Id*. at 9–10. At summary judgment, Mr. Carney had the opportunity to read Mr. Adams's briefs, to research the relevant case law, and to rebut Mr. Adams's arguments. Mr. Carney did not take this first bite at the apple. Instead, Mr. Carney sought a second bite at the apple in the form of a "do over" of his summary judgment arguments in his First Motion for Reconsideration. As the court noted, granting Mr. Carney "an opportunity to make arguments he did not make in the briefing" is "beyond the scope of the remedy requested or allowed." *Id.* at 10 (footnote omitted).

[10] *Id.* at 10.

[11] D.I. 61.

granting summary judgment to Mr. Adams and denying Mr. Carney's motion for summary judgment.[12]

On June 1, 2018, Mr. Carney filed a motion to stay (the "Motion" or "Motion to Stay") the court's judgment pending appeal.[13] Mr. Adams opposes the Motion to Stay.[14] Following an expedited briefing schedule, the Motion to Stay was fully briefed on June 18, 2018.[15] Two days later, Mr. Carney filed an Amended Notice of Appeal to the Third Circuit, adding various issues for appeal, including the court's denial[16] of Mr. Carney's First Motion for Reconsideration.[17]

Upon review of the briefs on the Motion to Stay, it is apparent to the court that Mr. Carney seeks yet a third bite[18] at the apple under the guise of arguing likelihood of success on the merits.[19] As if prompted by the court's explanation for why it denied his First Motion for Reconsideration,[20] with an appeal of that motion now pending, Mr. Carney argues to the court that he is likely to succeed on the merits, because the court made

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[12] D.I. 62.

[13] D.I. 63. On June 1, 2018, Mr. Carney sought expedited briefing on the Motion, D.I. 64, which the court granted on June 4, 2018, D.I. 65.

[14] D.I. 66.

[15] D.I. 67.

[16] D.I. 60.

[17] D.I. 68.

[18] See *supra* note 9 (identifying summary judgment as the "first" bite at the apple, and the First Motion for Reconsideration as the "second" bite at the apple).

[19] D.I. 63 at 7–10; D.I. 67 at 5–7.

[20] *See supra* note 9.

"several plain errors of law in [its] ruling."[21] It also appears that Mr. Carney has: (1) read the court's Memorandum Opinion Clarifying the Court's Opinion Issued December 6, 2017,[22] (2) reviewed Section II of Mr. Adams's summary judgment Answering Brief in Opposition,[23] (3) did some legal research, and (4) developed responses to rebut Mr. Adams's summary judgment arguments on standing.[24] Finally, in arguing likelihood of success on the merits, Mr. Carney cites at least two cases that were not discussed by the parties at summary judgment.[25] Based upon these factors, the court treats Mr. Carney's new arguments as a motion for reconsideration (the "Second Motion for Reconsideration").

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[21] D.I. 63 at 7. It is unclear which "ruling" this relates to. The court notes that in his First Motion for Reconsideration, Mr. Carney did not argue that the court made "several plain errors of law." *See generally* D.I. 42; D.I. 49. After review of the court's denial of his First Motion for Reconsideration, Mr. Carney appears to suddenly realize that his request for relief should be consistent with the legal standard for granting such relief.

[22] D.I. 61.

[23] D.I. 35 at 9–11.

[24] *Compare* D.I. 63 at 9–10 (citing *Finkelman v. Nat'l Football League,* 810 F.3d 187, 192 n.31 (3d Cir. 2016)) *and* D.I. 67 at 6–7 (citing *Finkelman,* 810 F.3d at 192 n.31; *Ayotte v. Planned Parenthood of N. New England,* 546 U.S. 320, 329 (2006); *Lewis v. Casey,* 518 U.S. 343, 357 (1996)), with D.I. 37 at 3–4 (not citing any of these cases at summary judgment) *and* D.I. 42 at 2–4 (making these standing arguments for the first time in Mr. Carney's First Motion for Reconsideration).

[25] *E.g.* D.I. 63 at 8 (citing *Corwin v. KKR Fin. Holdings LLC,* 125 A.3d 304 (Del. 2015); *In Re MFW Shareholders Litig.,* 67 A.3d 496 (Del. Ch. 2013)). Neither of these cases appear in the parties' summary judgment briefing. D.I. 29; D.I. 32 ; D.I. 34 ; D.I. 35 ; D.I. 37 ; D.I. 38.

II. STANDARD OF REVIEW

A. Motion for Reconsideration

Motions for reconsideration are the "functional equivalent" of a motion to alter or amend judgment under Federal Rule of Civil Procedure 59(e).[26] Meeting the standard for relief under Rule 59(e) is difficult. The purpose of a motion for reconsideration is to "correct manifest errors of law or fact or to present newly discovered evidence."[27] A court should exercise its discretion to alter or amend its judgment only if the movant demonstrates one of the following: (1) a change in the controlling law; (2) a need to correct a clear error of law or fact or to prevent manifest injustice; or (3) availability of new evidence not available when the judgment was granted.[28]

A motion for reconsideration is not properly grounded on a request that a court rethink a decision already made.[29] Nor may motions for reargument or reconsideration be used "as a means to argue new facts or issues that inexcusably were not presented to the court in the matter previously decided."[30] Reargument, however, may be appropriate where a court "has patently misunderstood a party, or has made a decision outside the adversarial issues presented to the [c]ourt by the par-

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[26] *Jones v. Pittsburgh Nat'l Corp.,* 899 F.2d 1350, 1352 (3d Cir. 1990 (citing *Fed. Kemper Ins.* Co. *v. Rauscher,* 807 F.2d 345, 348 (3d Cir. 1986)).

[27] *Max's Seafood Café ex rel. Lou-Ann, Inc. v. Quinteros*, 176 F.3d 699, 677 (3d Cir. 1999).

[28] *Id.*

[29] *Glendon Energy Co v. Borough of Glendon,* 836 F. Supp. 1109, 1122 (E.D. Pa. 1993).

[30] *Brambles USA, Inc. v. Blocker,* 735 F. Supp. 1239, 1240 (D. Del. 1990).

ties, or has made an error not of reasoning but of apprehension."[31] The "Court should not hesitate to grant the motion when compelled to prevent manifest injustice or correct clear error."[32]

B. Motion to Stay

The decision to grant a stay is within the district court's discretion.[33] A party seeking a stay pending appeal must prove that (1) it is likely to succeed on the merits of its appeal; (2) it will suffer irreparable injury absent a stay; (3) a stay will not substantially injure the other parties interested in the proceeding; and (4) a stay will not harm the public interest.[34] A moving party "must meet the threshold for the first two 'most critical' factors: it must demonstrate that it can win on the merits (which requires a showing significantly better than negligible but not necessarily more likely than not) and that it is more likely than not to suffer irreparable harm in the absence of preliminary relief."[35]

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[31] *Id.* at 1241 (citations omitted); *see also* D. Del. LR 7.1.5.

[32] *Brambles USA,* 735 F.Supp. at 1241 (citations omitted).

[33] *Cost Bros. v. Travelers lndem.* Co., 760 F.2d 58, 60 (3d Cir. 1985).

[34] *Republic of the Philippines v. Westinghouse Elec. Corp*., 949 F.2d 653, 658 (3d Cir. 1991).

[35] *Reilly v. City of Harrisburg,* 858 F.3d 173, 179 & n.3 (3d Cir. 2017) (footnote omitted) (citing *Singer Mgmt. Consultants, Inc. v. Milgram,* 650 F.3d 223, 229 (3d Cir. 2011) (en banc)). Although *Reilly* discusses the standard for a preliminary injunction, "the standard for obtaining a stay pending appeal is essentially the same as that for obtaining a preliminary injunction." *Conestoga Wood Specialities Corp. v. Sec'y of U.S. Dept of Health & Human Servs.,* No. 13-1144, 2013 WL 1277419, at *1 (3d Cir. Feb. 8, 2013); *see also Reilly,* 858 F.3d at 177 n.2 (citing *In re Revel AC, Inc.,* 802 F.3d 558, 571 (3d Cir. 2015)) ("In the parallel stay-pending-appeal context, where the factors are the same as for the

"If these gateway factors are met, a court then considers the remaining two factors and determines in its sound discretion if all four factors, taken together, balance in favor of granting the requested [] relief."[36]

III. DISCUSSION

A. Mr. Carney's Second Motion for Reconsideration

As discussed above, in his Motion to Stay, Mr. Carney, for the second time since the court's grant of summary judgment, makes numerous new arguments related to the substance of summary judgment that *he did not make in his summary judgment briefing*.[37] Essentially, Mr. Carney argues that he is likely to succeed on the merits, because once he is able to present the myriad new arguments researched and developed since summary judgment, the Third Circuit is bound to agree with him. Although the Third Circuit may well be inclined to give Mr. Carney another bite at the apple and allow him to make one or more of the new and ever-evolving arguments that he failed to make at summary judgment, Mr. Carney's Second Motion for Reconsideration presents a far more immediate question for the court—that is, whether the court may even consider the multitude of Mr. Carney's new arguments in deciding on the Motion to Stay.

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preliminary injunctions, we also follow the analytical path noted above.").

[36] *Id.*

[37] The irony is not lost on the court that Mr. Carney is appealing a denial of reconsideration, D.I. 68, and is at the same time moving to stay final judgment by arguing that he is likely to succeed because the court made "plain errors of law," D.I. 63 at 7, which encompasses an argument for reconsideration of the court's denial of reconsideration.

Reconsideration may be appropriate in some scenarios. For example, the court may reconsider the arguments that Mr. Carney made at summary judgment if he identifies: (1) a change in the controlling law; (2) the need to correct a clear error of law or fact or to prevent manifest injustice; or (3) the availability of new evidence not available when the judgment was granted.[38] To the extent that Mr. Carney has identified what he contends are "plain errors of law in the [c]ourt's ruling[,]"[39]it is difficult for the court to reconcile this position with his simultaneous assertion that his "appeal presents substantial legal questions—in fact, issues of first impression."[40] Mr. Carney disagrees with Mr. Adams over the interpretation of the case law, and this disagreement, Mr. Carney asserts, raises issues of first impression. However, this sort of dispute is not "a clear error of law or fact" that would support reconsideration.[41] In addition, even if the above factors were to support reconsideration of the arguments Mr. Carney made at summary judgment (which they do not), nothing in the briefs or the record suggests that the court should consider any of Mr. Carney's numerous new arguments in the Motion to Stay.[42] Therefore, Mr.

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[38] *Id.*

[39] D.I. 63 at 7.

[40] D.I. 63 at 4; *see also id.* at 7 (discussing "the significant issues of first impression.").

[41] As to this second factor Mr. Carney has also not identified any resulting "manifest injustice." The first and third factors do not appear to relate to the facts at hand.

[42] *Brambles USA, Inc.,* 735 F. Supp. at 1240 (citation omitted) ("[R]eargument and reconsideration requests 'are not a substitute for an appeal from a final judgment.'"). For the purposes of the Motion to Stay, the court declines to consider these new arguments.

Carney's Second Motion for Reconsideration, D.I. 63, is DENIED.

B. Mr. Carney's Motion to Stay Judgment

The parties agree that the court may stay judgment pending appeal and that the factors are as discussed above.[43] The court addresses the first two of the four factors, proceeding to the last two in the event that the first two weigh in favor of a stay.[44]

1. Likelihood of Success on the Merits

In moving for a stay, Mr. Carney avers that his "appeal presents substantial legal questions—in fact, issues of first impression[]" that justify relaxing the likelihood of success factor in its favor.[45] He also argues that, in light of persuasive case law and his new arguments, he expects to succeed on the merits.[46] In response, Mr. Adams contends that Mr. Carney is unlikely to succeed on the merits, and supports this contention with a review of its arguments from summary judgment, with which the court has already agreed.[47]

Having denied Mr. Carney's First and Second Motions for Reconsideration, the court declines to discuss what is effectively a reargument of the issues presented at summary judgment. Mr. Carney has appealed the court's summary judgment ruling.[48] He contends that his appeal presents numerous legal questions of the

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[43] D.I. 63 at 2–3; D.I. 66 at 1–2.

[44] *Reilly,* 858 F.3d at 179.

[45] D.I. 63 at 3–4.

[46] *Id.* at 8–10.

[47] D.I. 66 at 2–4.

[48] D.I. 68

first impression.[49] The court recognizes that, even though the court cannot consider Mr. Carney's new arguments, the Third Circuit may allow him to make these new arguments in his appeal. The Third Circuit may agree with Mr. Carney. Given the court's limited consideration of the merits of the case at bar, that the Third Circuit may agree with Mr. Carney is sufficient, for the purposes of the stay, "to show a *likelihood* of success on the merits (that is, a reasonable chance, or probability, of winning) to be granted relief."[50] Therefore, the court finds that the likelihood of success factor weighs in favor of a stay.

2. Irreparable Harm

Mr. Carney paints a picture of doom and gloom, arguing that the court's decision has "broad implications not just for Delaware, but for numerous other states, and even the President of the United States and United States Senate, who nominate and consent to appointment of judges."[51] Fortunately for the court, Mr. Carney also focuses on the court's more immediate concerns of harm to the state of Delaware. According to Mr. Carney, during his appeal to the Third Circuit, which may take a year or more, he must continue to fill judicial offices, and these are positions with terms lasting 12 years.[52] Mr. Adams takes a different tack and argues that he would be irreparably harmed by

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[49] D.I. 63 at 4.

[50] *Singer Mgmt. Consultants*, 650 F.3d at 229 (emphasis in original).

[51] D.I. 63 at 4–5.

[52] *Id.* at 5–6.

the grant of a stay: an argument that best addresses the balance of the equities and not irreparable harm.[53]

The court agrees with Mr. Carney that it is of paramount importance that he have a mechanism in place to promptly fill any judicial vacancies. The court also agrees that it will cause irreparable harm to the people of the State of Delaware if Mr. Carney is unable to fill judicial vacancies that may arise in the time that it takes for the Third Circuit to provide clear direction to the court. Such a mechanism currently exists in the provisions of the Constitution of the State of Delaware, even though the court has determined that these provisions violate the First Amendment of the United States Constitution. A stay of judgment would preserve that mechanism.

Absent a stay, the parties would have to craft a new, temporary mechanism for appointing judges. Were Mr. Carney to develop such a mechanism on his own (which presumably he could), he rightly points out that Mr. Adams "has made [it] clear" that he intends "to seek contempt hearings if he believes the Governor (or, presumably, the Delaware General Assembly) takes political affiliation into consideration when filling vacancies."[54] This has already happened

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[53] D.I. 66 at 5–6.

[54] D.I. 63 at 6 (citation omitted). Mr. Carney's argues that Mr. Adams is an "individual who plainly disagrees with the scope of the Court's rulings[.]" *Id.* Apparently, Mr. Adams disagrees with the court's holding on standing. *Compare* D.I. 61 at 11–12 ("Therefore, plaintiff has prudential standing to challenge, on First Amendment grounds, the entirety of Article IV, § 3 of the Constitution of the State of Delaware."); *with* D.I. 66 at 4 ("While the Court did find that Adams satisfied the requirements of prudential standing, it did not suggest this would allow the Court to decide the 'bare minimum' provisions as to which the Court found there was no Article III standing.").

once,[55] and it is likely to happen again.[56] Some form of consent agreement could fill this gap, but no such consent is currently before the court, and the parties do not appear able to reach an agreement. For the foregoing reasons, irreparable harm factors weigh in favor of a stay. With the first two factors favoring a stay, the court turns to the remaining factors.

3. Balance of the Equities

Mr. Adams argues that he is harmed more by the grant of a stay than Mr. Carney and the State of Delaware is harmed by the denial of a stay. As discussed above, the State of Delaware would be harmed by the denial of a stay, because Mr. Carney will be unable to fill judicial vacancies. In conjunction with his brief, Mr. Adams provided an appendix documenting that he had applied to two judgeships and had been rejected from both.[57] The rejection letters indicate that he was not rejected out of hand for his party affiliation and that rather, his applications had been considered on the merits:

> The [Judicial Nominating Commission] gave careful and thorough consideration to your application and had some tough decisions to make in selecting applicants to be forwarded to Governor Carney for consideration. The election of judicial candidates is a difficult task, particularly when there are a number of

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[55] D.I. 57. The court denied this motion without prejudice. D.I. 60 at 11.

[56] Clearly, contempt proceedings are not an efficient (or desirable) mechanism for filling judicial vacancies.

[57] D.I. 66, ex. A.

> well-qualified and distinguished applicants for the same position.[58]

Mr. Adams has applied to both the Superior Court and the Court of Common Pleas. Based upon these letters, as an unaffiliated voter, he does not currently appear to be harmed by the Judicial Nominating Commission's practices, and it does not appear that he will suffer harm were the court to grant the Motion to Stay. As for the larger public, including those individuals who belong to major political parties and whose applications to judicial office may be denied because of their specific party affiliation, those individuals will suffer harm under a stay. Taken together, defendant will be harmed absent a stay, plaintiff will not be harmed if a stay is granted, but there is a third group of individuals (not presently before the court and whose interests are ostensibly represented by Mr. Adams) whose First Amendment rights will continue to be harmed if a stay is granted. Therefore, the court finds that the balance of the equities weighs slightly against a stay.

4. Public Interest

There are several competing aspects of the public interest. First, the people of Delaware have an interest in filling judicial offices—with adequate judicial staffing people and entities are ensured due process and speedy trials. This weighs in favor of there being a mechanism for appointing judges. Second, the people of Delaware have written a state Constitution that reflects their long-standing will to have political balance on the judiciary. As against rules and unwritten policies linking employment to political affiliation,[59]

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[58] *Id.* at 9 of 10.

[59] *E.g., Elrod v. Burns,* 427 U.S. 347, 351 (1976)

upholding the public will pending appeal weighs in favor of a stay.

Third, the public has an interest in there being a stable mechanism for appointing judges. If the Third Circuit upholds the court's decision, and finds the political balance requirement to be a violation of the First Amendment, then a stay would mean that the mechanism would be changed once by the people of Delaware after the Third Circuit has spoken. However, if the Third Circuit reverses the court's decision and finds the political balance requirement does not violate the First Amendment, then a stay of judgment would mean that there would be no change to the mechanism for selecting appointees to judicial office. By comparison, no stay would mean continued uncertainty, additional litigation, and the potential for numerous unfilled judicial positions. The public interest in stability weighs in favor of a stay.

Fourth, there is a public interest in protecting First Amendment rights.[60] This interest weighs against a stay. Of the four interests discussed, only one weighs against a stay, and even though this is a First Amendment interest, it is opposed by public interests in due process and speedy trials. Therefore, the public interest weighs in favor of a stay.

5. Conclusion—Motion to Stay

Given the numerous new arguments in Mr. Carney's briefs on the Motion to Stay, the court did not consider many of these arguments as to likelihood of success on the merits. Although the court disagrees with Mr. Carney, the court nonetheless recognizes that the

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[60] *Joelner v. Vill. of Washington Park, Illinois*, 378 F.3d 613, 620 (7th Cir. 2004).

Third Circuit may agree with him—this chance is sufficient for him to establish a likelihood of success on the merits. Mr. Carney and the State of Delaware have an interest in filling judicial vacancies, and absent a stay, these empty judicial offices will cause the people of Delaware irreparable harm. The balance of the equities weighs slightly against a stay, but the public interest overwhelmingly supports one. Therefore, the court concludes that a stay of judgment is appropriate in the case at bar.

IV. CONCLUSION

For the reasons discussed herein, IT IS ORDERED that defendant's Motion to Stay, D.I. 63, is GRANTED. The court's judgment Order, D.I. 39, D.I. 62, is hereby STAYED pending appeal to the United States Court of Appeals for the Third Circuit.

Dated: June 25, 2018

/s/ Mary Pat Thynge
Chief U.S. Magistrate Judge

ADDENDUM

CONSTITUTION OF THE
STATE OF DELAWARE

Adopted in Convention.

June 4th, A. D. 1897.

Published by the Secretary of State,
by Authority of a Resolution of the
Constitutional Convention.

Republished by Order of the State Senate.

1903.

THE UNION REPUBLICAN,
GEORGETOWN, DEL.

* * *

SECTION 2. There shall be six State Judges who shall be learned in the law. One of them shall be Chancellor, one of them Chief Justice and the other four of them Associate Judges.

The Chancellor, Chief Justice and one of the Associate Judges may be appointed from and reside in any part of the State. The other three Associate Judges may be appointed from any part of the State. They shall be resident Associate Judges, and one of them shall reside in each county.

In case the commissions of two or more of the Associate Judges shall be of the same date, they shall, as soon as conveniently may be after their appointment,

determine their seniority by lot, and certify the result to the Governor.

SECTION 3. The Chancellor, Chief Justice and Associate Judges shall be appointed by the Governor, by and with the consent of a majority of all the members elected to the Senate, for the term of twelve years: Provided, however, that the Chancellor, Chief Justice and Associate Judges first to be appointee under this amended Constitution, shall be appointed by the Governor without the consent of the Senate, for the term of twelve years; and the persons so appointed shall enter upon the discharge of the duties of their respective offices upon taking the oath of office prescribed by this amended Constitution. If a vacancy shall occur, by expiration of term or otherwise, at a time when the Senate shall not be in session, the Governor shall within thirty days after the happening of any such vacancy convene the Senate for the purpose of confirming his appointment to fill said vacancy, and the transaction of such other executive business as may come before it. Such vacancy shall be filled as aforesaid for the full term. The said appointment shall be such that no more than three of the said five law judges, in office at the same time, shall have been appointed from the same political party.

SECTION 4. The Chancellor, Chief Justice and Associate Judges shall respectively receive from the State for their service a compensation which shall be fixed by law and paid quarterly and shall not be less than the annual sum of three thousand dollars, and they shall not receive any fees or perquisites in addition

* * *

CHAPTER 109

CONSTITUTIONAL AMENDMENT - RELATING TO JUDICIARY AND SUPREME COURT

AN ACT AGREEING TO THE PROPOSED AMENDMENTS TO ARTICLE IV OF THE CONSTITUTION OF THE STATE OF DELAWARE, RELATING TO THE JUDICIARY.

WHEREAS, Amendments to the Constitution of the State of Delaware were proposed to the Senate in the One Hundred and Fifteenth Session of the General Assembly as follows:

"AN ACT PROPOSING CERTAIN AMENDMENTS TO ARTICLE IV OF THE CONSTITUTION OF THE STATE OF DELAWARE, RELATING TO THE JUDICIARY.

"Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met (two-thirds of all the Members elected to each House agreeing thereto):

"Section 1. That Article W of the Constitution of the State of Delaware be amended so as to read as follows:

"ARTICLE IV

"Judiciary

"Section 1. The judicial power of this State shall be vested in a Supreme Court, a Superior Court, a Court of Chancery, an Orphans' Court, a Register's Court, Justices of the Peace, and such other courts as the General Assembly, with the concurrence of two-thirds of all the Members elected to each House, shall have by law established prior to the time this amended Article W of this Constitution becomes effective or shall from time to time by law establish after such time.

"Section 2. There shall be three Justices of the Supreme Court who shall be citizens of the State and learned in the law. One of them shall be the Chief Justice who shall be designated as such by his appointment and who when present shall preside at all sittings of the Court. In the absence of the Chief Justice the Justice present who is senior in length of service shall preside. If it is otherwise impossible to determine seniority among the Justices, they shall determine it by lot and certify accordingly to the Governor.

"There shall be six other State Judges who shall be citizens of the State and learned in the law. One of them shall be Chancellor, one of them President Judge of the Superior Court and of the Orphans' Court and the other four of them Associate Judges of the Superior Court and of the Orphans' Court. Three of the said Associate Judges shall be resident Associate Judges and one of them shall after appointment reside in each County of the State. If it is otherwise impossible to determine seniority of service among the said Associate Judges, they shall determine it by lot and certify accordingly to the Governor.

"There shall also be such number of other State Judges to be known as Vice-Chancellors as shall have been provided for by the Constitution or by Act of the General Assembly prior to the time this amended Article IV of this Constitution becomes effective and as may be provided for by Act of the General Assembly after such time. Each of such Vice-Chancellors shall be citizens of the State and learned in the law.

"Section 3. The Justices of the Supreme Court, the Chancellor and the Vice-Chancellor or Vice-Chancellors, and the President Judge and Associate Judges of the Superior Court and of the Orphans' Court shall be appointed by the Governor, by and with the consent of

a majority of all the Members elected to the Senate, for the term of twelve years each, and the persons so appointed shall enter upon the discharge of the duties of their respective offices upon taking the oath of office prescribed by this Constitution. If a vacancy shall occur, by expiration of term or otherwise, at a time when the Senate shall not be in session, the Governor shall within thirty (30) days after the happening of any such vacancy convene the Senate for the purpose of confirming his appointment to fill said vacancy and the transaction of such other executive business as may come before it. Such vacancy shall be filled as aforesaid for the full term.

"Appointments to the offices of the State Judiciary shall at all times be subject to all of the following limitations:

"First, no more than two of the three Justices of the Supreme Court in office at the same time, shall be of the same major political party, at least one of said Justices shall be of the other major political party;

"Second, no more than three of the five Judges of the Superior Court and Orphans' Court, in office at the same time, shall be of the same major political party, at least two of the five Judges shall be of the other major political party;

"Third, at any time when the total number of the offices of the three Justices of the Supreme Court, the five Judges of the Superior Court and Orphans' Court, the Chancellor and all Vice-Chancellors, shall be an even number, not more than one-half of the members of all such offices shall be of the same major political party; and at any time when the total number of such offices shall be an odd number, then not more than a bare majority of the members of all such offices shall

be of the same major political party, the remaining members of the Courts above enumerated shall be of the other major political party.

"Section 4. The Justices of the Supreme Court, the Chancellor and the Vice-Chancellor or Vice-Chancellors, and the President Judge and Associate Judges of the Superior Court and of the Orphans' Court shall respectively receive from the State for their services compensations which shall be fixed by law and paid monthly and they shall not receive any fees or perquisites in addition to their salaries for business done by them except as provided by law. They shall hold no other office of profit.

"Section 5. The President Judge of the Superior Court and of the Orphans' Court and the four Associate Judges thereof shall compose the Superior Court and the Orphans' Court, as hereinafter prescribed. The said five Judges shall designate those of their number who shall hold the said courts in the several counties. No more than three of them shall sit together in either of the said courts. In each of the said courts the President Judge when present shall preside and in his absence the senior Associate Judge present shall preside.

"One Judge shall constitute a quorum of the said Courts, respectively, except in the Superior Court sitting to try a criminal case involving a charge of capital felony, when three Judges shall constitute a quorum, and except in the Superior Court sitting to try cases of prosecution under Section 8 of Article V of this Constitution, when two Judges shall constitute a quorum, and except in the Orphans' Court sitting to hear appeals from a Register's Court, when two Judges shall constitute a quorum. One Judge may open and adjourn any of said Courts.

"Section 6. Subject to the provisions of Section 5 of this Article, two or more sessions of the Superior Court and of the Orphans' Court may at the same time be held in the same county or in different counties, and the business in the several counties may be distributed and apportioned in such manner as shall be provided by the rules of the said Courts, respectively.

"Section 7. The Superior Court shall have jurisdiction of all causes of a civil nature, real, personal and mixed, at common law and all other the jurisdiction and powers vested by the laws of this State in the formerly existing Superior Court; and also shall have all the jurisdiction and powers vested by the laws of this State in the formerly existing Court of General Sessions of the Peace and Jail Delivery; and also shall have all the jurisdiction and powers vested by the laws of this State in the formerly existing Court of General Sessions; and also shall have all the jurisdiction and powers vested by the laws of this State in the formerly existing Court of Oyer and Terminer.

"Section 8. The phrase 'Supreme Court' as used in Section 4 of Article V of this Constitution and the phrases 'Superior Court,' Court of General Sessions of the Peace and Jail Delivery,' 'Court of Oyer and Terminer' and 'Court of General Sessions' whenever found in the law of this State, elsewhere than in this amended Article IV of this Constitution, shall be read as and taken to mean, and hereafter printed as, the Superior Court provided for in this amended Article IV of this Constitution; and the phrase 'Chief Justice' wherever found in the law of this State existing at the time this amended Article IV of this Constitution becomes effective, elsewhere than in this amended Article IV of this Constitution, shall be read as and taken to mean, and hereafter printed as President Judge of the Superior

Court and of the Orphans' Court, as provided for in this amended Article IV of this Constitution.

"Section 9. The Orphans' Court shall have all the jurisdiction and powers vested by the laws of this State in the Orphans' Court.

"Section 10. The Chancellor and the Vice-Chancellor or Vice-Chancellors shall hold the Court of Chancery. One of them, respectively, shall sit alone in that court. This court shall have all the jurisdiction and powers vested by the laws of this State in the Court of Chancery. The business of the court shall be distributed by the Chancellor and the Vice-Chancellor or Vice-Chancellors between or among themselves in such manner as to expedite it. The rules of the Court of Chancery shall be made by the Chancellor and he may make general rules providing for the distribution of the business of the court between or among the Chancellor and the Vice-Chancellor or Vice-Chancellors. In any cause or matter in the Court of Chancery that is initiated by an application to a Judge of that Court, the application may be made directly to the Chancellor or a Vice-Chancellor. Causes or proceedings in the Court of Chancery shall be decided, and orders or decrees therein shall be made, by the Chancellor or Vice-Chancellor who hears them, respectively.

"In cases of temporary emergency, upon written request made by the Chancellor to the President Judge of the Superior Court and of the Orphans' Court, or to the Senior Associate Judge of said Courts if the said President Judge should be incapacitated or absent from the State, such President Judge or senior Associate Judge, as the case may be, shall be authorized and it shall be his duty to designate one or more of the five Judges of the Superior Court and of the Orphans' Court to sit separately as Acting Vice-Chancellor, or

Acting Vice-Chancellors, and hear and decide such causes in the Court of Chancery as the Chancellor may indicate prior to such designation that he desires to be so heard and decided. It shall be the duty of the Judges so designated to serve accordingly as Acting Vice-Chancellors. The Judges hearing and deciding such causes as such Acting Vice-Chancellors shall make all appropriate orders and decrees therein, in their own names as Acting Vice-Chancellors, and, for the purpose of said causes, shall be Judges of the Court of Chancery.

"(1) To issue writs of error in civil causes to the Superior Court and to determine finally all matters in error in the judgments and proceedings of said Superior Court in civil causes.

"(2) To issue upon application of the accused,' after conviction and sentence, writs of error in criminal causes to the Superior Court in all cases in which the sentence shall be death, imprisonment exceeding one month, or fine exceeding One Hundred Dollars ($100.00), and in such other cases as shall be provided by law; and to determine finally all matters in error in the judgments and proceedings of said Superior Court in such criminal causes; provided, however, that there shall be no writ of error to the Superior Court in cases of prosecution under Section 8 of Article V of this Constitution.

"(3) To receive appeals from the Superior Court in cases of prosecution under Section 8 of Article V of this Constitution and to determine finally all matters of appeal in such cases.

"(4) To receive appeals from the Court of Chancery and to determine finally all matters of appeal in the interlocutory or final decrees and other proceedings in chancery.

"(5) To receive appeals from the Orphans' Court and to determine finally all matters of appeal in the interlocutory or final decrees and judgments and other proceedings in the Orphans' Court.

"(6) To issue writs of prohibition, quo warranto, certiorari and mandamus to the Superior Court, the Court of Chancery and the Orphans' Court, or any of the Judges of the said courts and also to any inferior court or courts established or to be established by law and to any of the Judges thereof and to issue all orders, rules and processes proper to give effect to the same. The General Assembly shall have power to provide by law in what manner the jurisdiction and power hereby conferred may be exercised in vacation and whether by one or more Justices of the Supreme Court.

"(7) To issue such temporary writs or orders in causes pending on appeal, or on writ of error, as may be necessary to protect the rights of parties and any Justice of the Supreme Court may exercise this power when the court is not in session.

"(8) To exercise such other jurisdiction by way of appeal, writ of error or of certio-

rari as the General Assembly may from time to time confer upon it.

"(9) To hear and determine questions of law certified to it by the Court of Chancery, Superior Court or Orphans' Court where it appears to the Supreme Court that there are important and urgent reasons for an immediate determination of such questions by it. The Supreme Court may by rules define generally the conditions under which questions may be certified to it and prescribe methods of certification.

"Section 12. The Supreme Court shall always consist of the three Justices composing it except in case of a vacancy or vacancies in their number or in case any one or two of them shall be incapacitated or disqualified to sit by reason of interest, in any of which cases the Chief Justice of the Supreme Court, or if he be disqualified or incapacitated or if there be a vacancy in that office, the Justice who by seniority is next in rank to the Chief Justice, shall have the power to designate from among the Chancellor, the Vice-Chancellor or Vice-Chancellors, and the Judges of the Superior Court, one or more persons to sit in the Supreme Court temporarily to fill up the number of that court to three Justices and it shall be the duty of the person or persons so designated to sit accordingly; provided, however, that no one shall be so designated to sit in the Supreme Court to hear any cause in which he sat below. Three Justices shall constitute a quorum in the Supreme Court. Any one of the Justices of the Supreme Court may open and adjourn court.

"Section 13. In matters of chancery jurisdiction in which the Chancellor and all the Vice-Chancellors are interested or otherwise disqualified, the President

Judge of the Superior Court and of the Orphans' Court shall have jurisdiction, or, if the said President Judge is interested or otherwise disqualified, the senior Associate Judge not interested or otherwise disqualified shall have jurisdiction.

"Section 14. The President Judge of the Superior Court and of the Orphans' Court or any Associate Judge shall have power, in the absence of the Chancellor and all the Vice-Chancellors from the county where any suit in equity may be instituted or during the temporary disability of the Chancellor and all the Vice-Chancellors, to grant restraining orders, and the said President Judge or any Associate Judge shall have power, during the absence of the Chancellor and all the Vice-Chancellors from the State or his and their temporary disability, to grant preliminary injunctions pursuant to the rules and practice of the Court of Chancery; provided that nothing herein contained shall be construed to confer general jurisdiction over the case.

"Section 15. The Governor shall have power to commission a Judge or Judges ad litem to sit in any cause in any of said Courts when by reason of legal exception to the Judges authorized to sit therein, or for other cause, there are not a sufficient number of Judges available to hold such Court. The commission in such case shall confine the office to the cause and it shall expire on the determination of the cause. The Judge so appointed shall receive reasonable compensation to be fixed by the General Assembly. A Member of Congress, or any person holding or exercising an office under the United States, shall not be disqualified from being appointed a Judge ad litem.

"Section 16. The jurisdiction of each of the aforesaid courts shall be co-extensive with the State. Process

may be issued out of each court, in any county, into every county. No costs shall be awarded against any party to a cause by reason of the fact that suit is brought in a county other than that in which the defendant or defendants may reside at the time of bringing suit.

"Section 17. The General Assembly, notwithstanding anything contained in this Article, shall have power to repeal or alter any Act of the General Assembly giving jurisdiction to the former Court of Oyer and Terminer, the former Superior Court, the former Court of General Sessions of the Peace and Jail Delivery, the former Court of General Sessions, the Superior Court hereby established, the Orphans' Court or the Court of Chancery, in any matter, or giving any power to either of the said courts. The General Assembly shall also have power to confer upon the Superior Court, the Orphans' Court and the Court of Chancery jurisdiction and powers in addition to those herein-before mentioned. Until the General Assembly shall otherwise direct, there shall be an appeal to the Supreme Court in all cases in which there is an appeal, according to any Act of the General Assembly, to the former Court of Errors and Appeals or to the former Supreme Court of this State.

"Section 18. Until the General Assembly shall otherwise provide, the Chancellor and the Vice-Chancellor or Vice-Chancellors, respectively, shall exercise all the powers which any law of this State vests in the Chancellor, besides the general powers of the Court of Chancery, and the President Judge of the Superior Court and of the Orphans' Court and the Associate Judges of said Courts shall each singly exercise all the powers which any law of this State vests in the Judges singly of the former Superior Court, whether as members of the Court or otherwise.

"Section 19. Judges shall not charge juries with respect to matters of fact, but may state the questions of fact in issue and declare the law.

"Section 20. In civil causes where matters of fact are at issue, if the parties agree, such matters of fact shall be tried by the court, and judgment rendered upon their decision thereon as upon a verdict by a jury.

"Section 21. In civil causes, when pending, the Superior Court shall have the power, before judgment, of directing, upon such terms as it shall deem reasonable, amendments in pleadings and legal proceedings, so that by error in any of them, the determination of causes, according to their real merits, shall not be hindered; and also of directing the examination of witnesses and parties litigant.

"Section 22. At any time pending an action for debt or damages, the defendant may bring into court a sum of money for discharging the same, together with the costs then accrued and the plaintiff not accepting the same, if upon the final decision of the cause, he shall not recover a greater sum than that so paid into court for him, he shall not recover any costs accruing after such payment, except where the plaintiff is an executor or administrator.

"Section 23. By the death of any party, no suit in chancery or at law, where the cause of action survives, shall abate, but, until the General Assembly shall otherwise provide, suggestion of such death being entered of record, the executor or administrator of a deceased petitioner or plaintiff may prosecute the said suit; and if a respondent or defendant dies, the executor or administrator being duly serviced with a scire facias thirty (30) days before the return thereof shall be considered as a party to the suit, in the same manner

as if he had voluntarily made himself a party; and in any of those cases, the court shall pass a decree, or render judgment for or against executors or administrators as to right appertains. But where an executor or administrator of a deceased respondent or defendant becomes a party, the court upon motion shall grant such a continuance of the cause as to the judges shall appear proper.

"Section 24. Whenever a person, not being an executor or administrator, appeals or applies to the Supreme Court for a writ of error, such appeal or writ shall be no stay of proceedings in the court below unless the appellant or plaintiff in error shall give sufficient security to be approved by the court below or by a judge of the Supreme Court that the appellant or plaintiff in error shall prosecute respectively his appeal or writ to effect, and pay the condemnation money and all costs, or otherwise abide the decree in appeal or the judgment in error, if he fail to make his plea good.

"Section 25. No writ of error shall be brought upon any judgment heretofore confessed, entered or rendered, or upon any judgment hereafter to be confessed, entered or rendered, but within six (6) months after the confessing, entering or rendering thereof; unless the person entitled to such writ be an infant, non compos mentis, or a prisoner, and then within six months exclusive of the time of such disability.

"Section 26. The Prothonotary of each County shall be the Clerk of the Superior Court in and for the County in which he holds office. He may issue process, take recognizance of bail and enter judgments, according to law and the practice of the court. No judgment in one county shall bind lands or tenements in another until a testatum fieri facias being issued shall be entered of record in the office of the Prothonotary of the County

wherein the lands or tenements are situated. Such Prothonotary shall perform all duties heretofore performed by the Clerk of the Peace as Clerk of the former Court of General Sessions and the former Court of Oyer and Terminer.

"Section 27. The Supreme Court shall have the power to appoint a Clerk to hold office at the pleasure of the said Court. He shall receive from the State for his services a compensation which shall be fixed from time to time by the said Court and paid monthly.

"Section 28. The General Assembly may by law give to any inferior courts by it established or to be established, or to one or more justices of the peace, jurisdiction of the criminal matters following, that is to say—assaults and batteries, carrying concealed a deadly weapon, disturbing meetings held for the purpose of religious worship, nuisances, and such other misdemeanors as the General Assembly may from time to time, with the concurrence of two-thirds of all the Members elected to each House, prescribe.

"The General Assembly may by law regulate this jurisdiction, and provide that the proceedings shall be with or without indictment by grand jury, or trial by petit jury, and may grant or deny the privilege of appeal to the Superior Colift; provided, however, that there shall be an appeal to the Superior Court in all cases in which the sentence shall be imprisonment exceeding one (1) month, or a fine exceeding One Hundred Dollars ($100.00).

"Section 29. There shall be appointed, as hereinafter provided, such number of persons to the office of Justice of the Peace as shall be directed by law, who shall be commissioned for four (4) years.

"Section 30. Justices of the Peace and the judges of such courts as the General Assembly may establish, or shall have established prior to the time this amended Article IV of this Constitution becomes effective, pursuant to the provisions of Section 1 or Section 28 of this Article, shall be appointed by the Governor, by and with the consent of a majority of all the Members elected to the Senate, for such terms as shall be fixed by this Constitution or by law.

"Section 31. The Registers of Wills of the several counties shall respectively hold the Register's Court in each County. Upon the litigation of a cause the depositions of the witnesses examined shall be taken at large in writing and made part of the proceedings in the cause. This court may issue process throughout the State. Appeals may be taken from a Register's Court to the Orphans' Court. In cases where a Register of Wills is interested in questions concerning the probate of wills, the granting of letters of administration, or executors' or administrators' accounts, the cognizance thereof shall belong to the Orphans' Court.

"Section 32. An executor or administrator shall file every account with the Register of Wills for the County, who shall, as soon as conveniently may be, carefully examine the particulars with the proofs thereof, in the presence of such executor or administrator, and shall adjust and settle the same accordingly to the right of the matter and the law of the land; which account so settled shall remain in his office for inspection; and the executor, or administrator, shall within three (3) months after such settlement give notice in writing to all persons entitled to shares of the estate, or to their guardians, respectively, if residing within the State, that the account is lodged in the said office for inspection.

"Exceptions may be made by persons concerned to both sides of every such account, either denying the justice of the allowances made to the accountant or alleging further charges against him; and the exceptions shall be heard in the Orphans' Court for the County; and thereupon the account shall be adjusted and settled according to the right of the matter and the law of the land.

"The General Assembly shall have the power to transfer to the Orphans' Court all or a part of the jurisdiction by this Constitution vested in the Register of Wills and to vest in the Orphans' Court all or a part of such jurisdiction and to provide for appeals from that Court exercising such jurisdiction.

"Section 33. The style in all process and public acts shall be THE STATE OF DELAWARE. Prosecutions shall be carried on in the name of the State.

"Section 34. The Chancellor, Chief Justice and Associate Judges in office at and immediately before the time this amended Article IV of this Constitution becomes effective shall hold their respective offices until the expiration of their terms respectively and shall receive the compensation provided by law. They shall, however, be hereafter designated as follows:

"The Chancellor shall continue to be designated as Chancellor;

"The Chief Justice shall hereafter be designated as President Judge of the Superior Court and of the Orphans' Court;

"The Associate Judges shall hereafter be designated as Associate Judges of the Superior Court and of the Orphans' Court.

"The Vice-Chancellor in office at and immediately before the time this amended Article IV of this Constitution becomes effective shall hold his office until the expiration of the period of twelve years from the date of the commission for the office of Vice-Chancellor held by him at the time this amended Article IV of this Constitution becomes effective and shall receive the compensation provided by law. He shall continue to be designated as Vice-Chancellor.

"Section 35. All writs of error and appeals and proceedings pending, at the time this amended Article IV of this Constitution becomes effective, in the Supreme Court as heretofore constituted shall be proceeded within the Supreme Court hereby established, and all the books, records and papers of the said Supreme Court as heretofore constituted shall be the books, records and papers of the Supreme Court hereby established.

"All suits, proceedings and matters pending, at the time this amended Article IV of this Constitution becomes effective, in the Superior Court as heretofore constituted shall be proceeded within the Superior Court hereby established and all the books, records and papers of the said Superior Court as heretofore constituted shall be the books, records and papers of the said Superior Court as heretofore constituted shall be the books, records and papers of the Superior Court hereby established.

"All indictments, proceedings and matters of a criminal nature pending in the former Court of General Sessions and in the former Court of Oyer and Terminer, at the time this amended Article IV of this Constitution becomes effective, and all books, records and papers of said former Court of General Sessions and former Court of Oyer and Terminer shall be trans-

ferred to the Superior Court hereby established, and the said indictments, proceedings and matters pending shall be proceeded with to final judgment and determination in the said Superior Court hereby established.

"The Court of Chancery is not affected by this amended Article IV of this Constitution otherwise than by the provisions with respect to a Vice-Chancellor or Vice-Chancellors."

AND WHEREAS, the said proposed amendment was agreed to by two-thirds of all the members elected to each House in the said One Hundred and Fifteenth Session of the General Assembly; and

WHEREAS, the said proposed amendment was published by the Secretary of State three months before the then next general election, to wit: the general election of 1950, in three newspapers in each County in the State of Delaware, NOW, THEREFORE,

Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met (two-thirds of all the Members elected to each House of the General Assembly agreeing thereto):

Section 1. That the said proposed amendment be and it is hereby agreed to and adopted and that the same shall forthwith become and be a part of the Constitution.

Approved May 14, 1951.

(ORDER LIST: 589 U.S.)

Friday, December 6, 2019

CERTIORARI GRANTED

No. 19-309 CARNEY, GOV. OF DE V. ADAMS, JAMES R.

The petition for a writ of certiorari is granted. In addition to the questions presented by the petition, the parties are directed to brief and argue the following question: Whether respondent has demonstrated Article III standing.