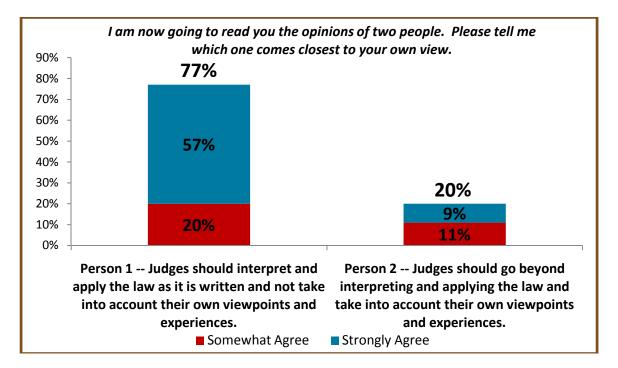
TO:	Interested Parties
FROM:	Kellyanne Conway, President & CEO the polling company™, inc./WomanTrend
DATE:	October 6, 2009
RE:	Statewide Survey of Pennsylvania Voters

On behalf of *The Federalist Society for Law and Public Policy*, the polling companyTM, inc./ WomanTrend conducted a statewide survey of 500 Pennsylvania residents registered to vote. Voters were queried on their levels of knowledge, opinions, expectations, and feelings of judicial philosophy, judicial selection, the upcoming November election for State Supreme Court, and rulings of the Pennsylvania Supreme Court. The survey has an overall margin of error of ±4.4%. Margins of error for subgroups are higher. An explanation of methodology follows this analysis.

Voters Affirm: There's No Place in the Courtroom for Judges' Individual Ideas and Opinions, Just Their Interpretations of the Law

In response to a question that presented two opposing positions revealed that 77% of Pennsylvania voters preferred that judges *"interpret and apply the law as it is written and not take into account their own viewpoints and experiences."* Conversely, just one-in-five (20%) would rather judges *"go beyond interpreting and applying the law and take into account their own viewpoints and experiences."* Intensity favored restraint: respondents were six times more likely to agree strongly that judges should check their own views at the courtroom doors as they were to agree strongly that they should incorporate their personal opinions into rulings (57% vs. 9%).



- Majorities of men, women, and Pennsylvanians across the age, region, race, political party, and ideological spectra aligned with the views of Person 1 – that judges should omit their personal viewpoints from their rulings and focus strictly on interpreting and applying the law as it is written.
- Self-identified Democrats (26%) and liberals (34%) were more likely than the average to align with the opposing view that judges should make way for their viewpoints in rulings but still majorities aligned with Person 1 (72% and 64%, respectively).

Pennsylvanians Prefer Rule of Law – Not Personal Whims – Dictate and Influence Justices' Decisions

A series of five questions centering on the principles of "judicial activism" and "judicial restraint" were presented to respondents. Voters were first asked to assess their familiarity with either of the two terms. Majorities admitted they were "not too familiar" or "not at all familiar" with either "judicial activism" (69%) or "judicial restraint" (71%).

	Majorities Admit Little t Terms "Judicial Activism		•
-	familiar are you with the concept dicial activism"? Would you say you are	-	familiar are you with the concept dicial restraint"? Would you say you are
<u>30%</u>	TOTAL FAMILIAR (NET)	<u>27%</u>	TOTAL FAMILIAR (NET)
11% 19%	VERY FAMILIAR SOMEWHAT FAMILIAR	7% 20%	VERY FAMILIAR SOMEWHAT FAMILIAR
69% 18%	TOTAL UNFAMILIAR (NET) JUST A LITTLE BIT FAMILIAR	71% 24%	TOTAL UNFAMILIAR (NET) JUST A LITTLE BIT FAMILIAR
51%		47%	
1% *	DO NOT KNOW (VOL.) REFUSED (VOL.)	2% -	DO NOT KNOW (VOL.) REFUSED (VOL.)

Familiarity with Judicial Activism

- Majorities of men, women, and voters of all ages, races, regions, political parties, and ideologies said they were unfamiliar with judicial activism.
- Regularly-attending Catholics¹ were 15 points more likely than the average (45% vs. 30%) and twice as likely as Catholics who infrequently attend Mass to express acquaintance with it (45% vs. 22%).

¹ Defined as Catholics who attend Mass at least once a week.

- Thirty-nine percent of men said they recognized "judicial activism", compared to 21% of women. Still, 60% of men (and 77% of women) said they knew little to nothing about it.
- Voters aged 18-34 (78%) and those in South Central Pennsylvania (85%) stood out as least aware of the term.

Familiarity with Judicial Restraint

- Again, lack of awareness crossed the gender lines and spanned the age, region, racial, political, and ideological spectra as majorities of all major demographic and political groups said they were only slightly or not at all familiar with the term "judicial restraint."
- Men were more than twice as likely as women to express acquaintance with the concept (38% vs. 16%).
- Church-going Catholics were again more prone than their less-observant Catholic counterparts to be aware of the idea (35% vs. 19%).

The brief and objective definition of judicial activism – "a term used to describe when a judge feels that his or her role is not simply to review the law as it is written, but is instead to allow for new or evolving meaning of the law over time" – left respondents with mixed feelings. Forty-six percent of Pennsylvanians said they were <u>"mostly positive"</u> toward the concept while 44% assessed their reactions as <u>"mostly negative."</u>

- Whereas 51% of women were favorable toward the definition of judicial activism, 52% of men were unfavorable toward it.
- Sixty-three percent of self-identified Democrats had positive reactions to the definition of activism while an identical portion of self-identified Republicans (63%) expressed negative sentiments. Self-identified Independents split 48%-41%, but the difference is negligible given the margin of error for this subgroup.
- Voters on the ideological left were more aligned than those on the right: 77% of liberals were mostly positive while 16% were mostly negative. Among conservatives, 55% were sour toward the idea while 34% were warm toward it.

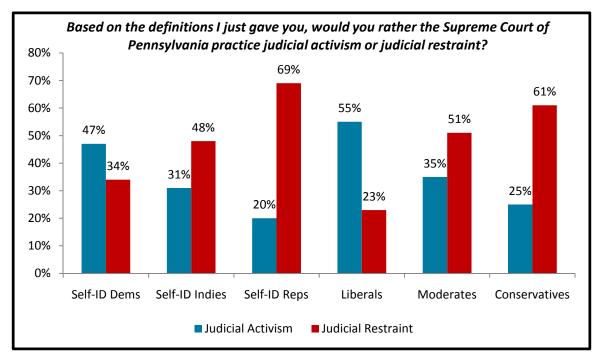
Feedback to the explanation for judicial restraint – "a term used to describe when a judge views his or her role solely as an evaluator of whether a law or lower court ruling is in line with the state constitution" was overwhelmingly favorable. <u>"Mostly positive" reactions</u> outpaced "mostly negative" ones by a margin of more than 4-to-1 (69% vs. 16%).

- <u>Majorities of men, women, and voters of all ages, races, and regions were "mostly</u> <u>positive" toward the definition of judicial restraint, including:</u>
 - 69% (fine to use numerical when a bullet/not full sentence) of men and women alike;
 - At least 64% of every age group, including 70% of 18-34 year olds and 77% of 35-44 year olds;

- $\circ~$ A minimum of 65% of voters in all five regions; and 53% of Blacks and 71% of Whites.
- Majorities of self-identified Democrats (66%), Independents (76%), Republicans (71%), liberals (63%), moderates (74%), and conservatives (68%) issued resounding favorable views toward judicial restraint.

After hearing the definitions and asked to choose between the two, "restraint" was preferred by 14 points to "activism" (49% vs. 35%).

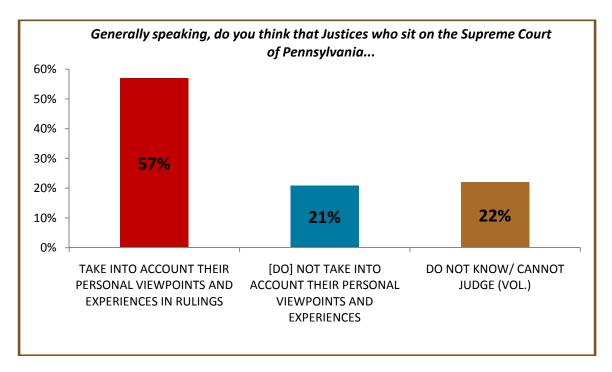
- Pluralities, if not majorities, of men (56%) and women (42%), 18-34 year olds (47%), 35-44 year olds (58%), 45-54 year olds (50%), 55-64 year olds (47%), and seniors (44%) checked the boxes in favor of judicial restraint.
- With the exceptions of Philadelphia and Southeast Pennsylvania, majorities of all regions preferred restraint over activism: 56% of Southwest Pennsylvania, 53% of South Central Pennsylvania, and 52% of Northern Pennsylvania. In Philadelphia, activism was favored over restraint, but only by a 44%-29% margin, failing to achieve majoritybacking. In Southeast Pennsylvania, the outcome mirrored the overall split: 49% for restraint and 35% for activism.



• As outlined in the adjacent table, middle-of-the-road voters – Independents and moderates – favored restraint over activism.

Voters Say Justices "Guilty" of Incorporating Personal Viewpoints

When asked to opine whether or not Justices who currently sit on the Supreme Court of Pennsylvania "take into account their personal viewpoints and experiences in rulings", nearly three-in-five (57%) felt confident to assert that Justices do, in fact, insert their own opinions while 21% felt the opposite. Slightly more than one-in-five (22%) 22% confessed they did not have enough knowledge to pass judgment on the inclusion of personal viewpoints.



- Though majorities of men, women, and voters of all ages, races, and regions believed Pennsylvania's Supreme Court Justices *do* take into account their own personal viewpoints, 55-64 year olds (67%), voters in the Philly region (70%) stood out as most prone to hold this viewpoint.
- Twenty-nine percent of 45-54 year olds were inclined to believe that Pennsylvania Justices exclude their viewpoints; this cohort represented the "peak" for this position.
- Majorities of self-identified Democrats (59%), Independents (62%) and Republicans (52%) joined majorities of liberals (62%), moderates (55%), and conservatives (54%) to deem the court as overly-reliant on personal viewpoints as sources of jurisprudence.

Voters Say Experience on the Bench – Especially When It's Filled With Examples of Judicial Restraint – Most Critical at the Ballot Box

When asked to select one of eight possible factors that could influence their votes for State Supreme Court Justice , nearly one-third (32%) of Pennsylvania voters said that <u>past experience</u> <u>as a judge</u> will be most important when deciding for whom they will vote in November. One-infour (25%) indicated that they will look to the candidates' <u>records of interpreting the law as it</u> <u>is written in past rulings.</u> In contrast, 5% said they will hone in on <u>candidates' annals of</u> <u>incorporating personal viewpoints into their</u> <u>decisions.</u>

All other items – including the candidates' political histories and affiliations – were deemed important by fewer than one-in-ten voters.

A partisan split emerged with respect to the relative priority that Pennsylvania voters assigned to different judicial criteria:

Which of the following will be most important when deciding for whom you will vote for Supreme Court Justice?

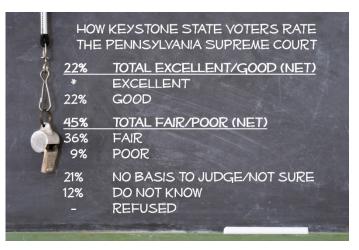
32%	PAST EXPERIENCE AS A JUDGE
25%	RECORD OF INTERPRETING THE LAW
	AS IT IS WRITTEN IN PAST RULINGS
7%	POLITICAL PARTY AFFILIATION
6%	PAST POLITICAL EXPERIENCE, SUCH
	AS HOLDING ELECTED OFFICE
6%	PROFESSIONAL EXPERIENCE OUTSIDE
	THE COURTROOM
5%	RECORD OF INCORPORATING
	PERSONAL VIEWS AND
	EXPERIENCES IN PAST RULINGS
5%	LEGAL ARTICLES ADVOCATING FOR
	THE INTERPRETATION OF
	THE LAW AS IT IS WRITTEN
5%	LEGAL ARTICLES ADVOCATING FOR
	THE INCORPORATION OF
	PERSONAL VIEWS AND EXPERIENCES
	INTO COURTROOM
	RULINGS
	RULINGS

3% OTHER (VOLUNTEERED)

- 5% DO NOT KNOW (VOLUNTEERED)
- 1% REFUSED (VOLUNTEERED)
- Self-identified Democrats (38%) and liberals (41%) were more apt than the average to take into consideration a candidate's <u>past experience as a judge</u>.
- Self-identified Republicans (33%) and conservatives (33%) stood out as more prone to want to take into consideration a candidate with a <u>record of interpreting the law as it is</u> written in past rulings.
- Voters aged 18-34 and 55-64 were more likely than those in other age groups to focus on a candidate's <u>past political experience</u>.
- Men were more apt than women to look to <u>legal articles advocating for the</u> <u>interpretation of the law as it is written.</u>

Pennsylvanians Sour on State Supreme Court

When prompted to rate the job the Pennsylvania Supreme Court is doing, most respondents offered the court a polite "OK." Less than 1% of respondents said the Court deserves a grade of "excellent" while 22% assessed it with a "good." Nearly one-half (45%) of voters graded the State Supreme Court negatively: more than two-

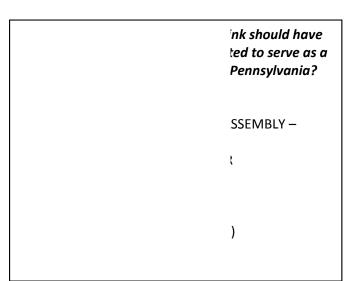


thirds (36%) felt that the court is doing a "fair" job while nearly one-in-ten (9%) gave the court a "poor" grade. One-third felt that they lacked the necessary information to render such a make such a judgment.

- No demographic groups stood out as more inclined than the average to applaud the Supreme Court of Pennsylvania, except for moderates. This ideologically "middle-of-the-road" cohort was 12 points more likely than conservatives to describe the performance of the court as excellent or good (28% vs. 16%).
- The most negative attitudes toward the court could be observed among self-identified Independents, self-identified Republicans, and conservatives; majorities of these groups offered relatively high combined "fair" and "poor" assessments (58%, 51%, and 52%, respectively).
- Voters who said they were "very" or "somewhat" familiar with the goings on of the court were much more disapproving of its performance: 60% said it was doing a "fair" (52%) or "poor" job (8%).

"We the People" Should be Most Persuasive in Selecting Justices, Pennsylvania Voters Say...

When asked who should have the greatest input on who is selected to serve as a Justice on the Pennsylvania's Supreme Court, more than seven-in-ten (72%) of voters said that they themselves – Pennsylvania voters – should have the strongest influence. One-in-ten (10%) favored handing responsibility to the Pennsylvania General Assembly. An even smaller 8% felt that the Governor of

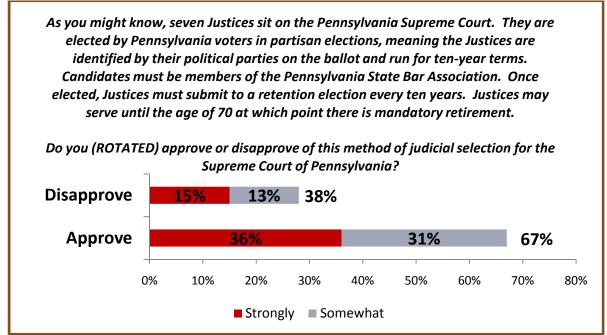


Pennsylvania ought to have the greatest input while, in last place, just 6% opted to give Pennsylvania lawyers the most power in choosing which candidates are elected to serve as Justices on Pennsylvania's Supreme Court.

- Majorities of men and women and all age groups, regions, races, parties, ideologies, and religions felt that <u>Pennsylvania voters</u> should be the deciders.
- Self-identified Republicans were 16 points more likely than their Democratic counterparts (80% vs. 64%) to want the power to rest with the citizens.
- Similarly, conservatives were 10 points more likely than moderates and an eye-popping 21 points more likely than self-identifying liberals to allot Pennsylvania voters the power (80% vs. 72% vs. 59%).
- Voters residing in South Central Pennsylvania were more than twice as likely as the average to delegate to the Pennsylvania General Assembly the responsibility of selecting justices (21% vs. 10%).
- Democrats were nearly three times as likely as Republicans to give the Governor of Pennsylvania the greatest sway in selecting judges (11% vs. 4%).
- Liberals and self-identified Democrats were more likely than conservatives and Republicans, respectively, to allot the greatest justice-selecting input to Pennsylvania lawyers (2% Republicans vs. 9% Democrats; 2% conservatives vs. 12% liberals).

...So Don't Tinker With the Process

In a separate question, approval of the current method of selection (partisan elections) outpaced disapproval by a margin of more than 2-to-1 (67% vs. 28%). Furthermore, strong supporters of partisan elections outnumbered strong opponents by a similar margin (36% vs. 15%).



- Voters who identified themselves as unfamiliar with the court and its rulings were 9 points more likely than those who said they were acquainted with it to approve of the use of partisan elections (69% vs. 60%).
- Blacks were 20 points more likely than Whites to "strongly approve" of the current partisan method of judicial selection (55% vs. 35%).
- Men also stood out as were more likely than women to offer intense approval of the partisan system (40% vs. 31%).
- True to their political self-labeling, Independents were eleven points more likely than both Democrats and Republicans to "strongly disapprove" of the partisan judicial selection method (25% Independents vs. 14% Democrats and Republicans).

In a separate question that proposed changing the method of judicial selection from partisan elections to one that utilizes a nominating commission, 72% of Pennsylvanians preferred retaining status quo, including 61% of Democrats, 75% of Independents, and 84% of Republicans. Slightly more than one-in-five (21%) wanted to give the nominating commission a try.

Some have suggested that Pennsylvania change the way its Supreme Court Justices are selected. Instead of an election by the voters, some have said that the state should use a nominating commission to select Justices. In other states that have nominating commissions, 5 to 18 individuals, many of whom are often lawyers, review the resumes and qualifications of potential new Justices. The commission then makes recommendations to the Governor and the Governor then appoints one of the candidates. In some states, voters get a chance to vote on the Justice, but years later after the appointment. In your opinion, should Pennsylvania...

appointment. In your opin	non, should rennsylvania
KEEP ELECTING ITS SUPREME COURT JUSTICES	SWITCH TO NOMINATING COMMISSION SYSTEM
	TO SELECT SUPREME COURT JUSTICES
72%	21%

- While tri-partisan agreement emerged, voters on the left were less supportive than those on the right. While slightly more than three-in-five Democrats (61%) approved, three-quarters Independents (75%) and 84% of Republicans preferred the current system of Supreme Court judicial elections. Similarly, 56% of liberals, 68% of moderates, and 83% of conservatives followed suit.
- Self-identified Democrats were nearly three times as likely as their Independent and Republican counterparts to support the change (32% vs. 11% vs. 12%).
- Liberals were nearly three times as likely as conservatives to want to give the status quo the boot and in place of a commission (37% vs. 13%). Moderates reflected the average (24% vs. 21%)
- Voters aged 55-64 year olds stood out as more likely than the average to favor switching to a nominating commission (35% vs. 21%).
- Thirty-eight percent of Philadelphians supported switching to a nominating commission, the highest of any region in the state. Fourteen percent of Southwestern Pennsylvania

residents, 22% of those in the Southeastern section of the state, and 24% in the South Central area backed changing to a nominating commission.

• Pennsylvania voters who described themselves as being religiously unaffiliated were on average twice as likely as their Catholic and Protestant counterparts to opt for switching to the nominating convention (40% unaffiliated vs. 18% for both frequent and infrequent Catholics, 19% frequent Protestants, and 21% infrequent Protestants).

The fervent opposition to changing the law and eliminating partisan elections would manifest itself at the ballot box, these voters predict. Some 63% of them said they would vote against an amendment to the Commonwealth of Pennsylvania Constitution that would replace elections with a nominating commission selection method. Opposition was so strong that the percentage of respondents indicating they would "definitely vote no" outweighed the combined percentages of those "probably" or "definitely" voting "yes" (48% definitely voting no vs. 29% definitely/probably voting yes).

In order to change the method of judicial selection from elections to a nominating commission method, Pennsylvania would have to amend its state Constitution. This requires an initial approval by a majority of legislators in both the Pennsylvania General Assembly and Senate. If majorities of both approved a Constitutional amendment that would replace elections with a nominating commission method, the amendment would then be placed on the ballot for Pennsylvania citizens to vote upon.

Would you (ROTATED) vote yes or vote no on an amendment that would eliminate the election of Justices to the Supreme Court of Pennsylvania and replace it with a nominating commission selection method?

	met	nou:		
29%	TOTAL YES (NET)	<u>63%</u>	TOTAL NO (NET)	
19%	DEFINITELY VOTE YES	15%	PROBABLY VOTE NO	
10%	PROBABLY VOTE YES	48%	DEFINITELY VOTE NO	

- Voters aged 55-64 were ten points more apt than seniors to vote to replace the current system with a nominating convention (39% vs. 29%).
- Philadelphia residents were also more likely than voters in any other area to vote for eliminating the election of justices and replacing it with a nominating convention (42%).
- Republicans were 20 points more likely than Democrats to vote "no" and keep the current election system (73% vs. 53%).
- Similarly, when looking at ideology, conservatives were more likely than moderates and liberals to vote "no" (71% vs. 58% vs. 53%)
- Those who have guns in their homes were more than 20 points likely than those without guns to vote "no" on the amendment that would eliminate the current judicial selection method (74% vs. 57%)

Justice Who?

The Pennsylvania electorate admitted to possess a paucity of knowledge about the goings on with the Pennsylvania Supreme Court. Nearly two-in-five (38%) reported that they were "not at all familiar" with the Supreme Court of Pennsylvania and its rulings and one-third (33%) said they were only "just a little bit familiar," yielding more than seven-in-ten (71%) participants confessing unfamiliarity with the Pennsylvania Supreme Court.

In contrast, 28% described themselves as being familiar with the Supreme Court and its rulings, but only 3% were "very familiar" and the bulk –25%--being "somewhat familiar."

How familiar would you say you are with the Supreme Court of Pennsylvania and its rulings and decisions? Are you...

28%	TOTAL FAMILIAR (NET)
3%	VERY FAMILIAR
25%	SOMEWHAT FAMILIAR
<u>71%</u>	TOTAL UNFAMILIAR (NET)
33%	JUST A LITTLE BIT FAMILIAR
38%	NOT AT ALL FAMILIAR
1%	DO NOT KNOW (VOL.)
*	REFUSED (VOL.)

- Majorities of each gender, all age groups, regions, races, party affiliations, ideologies, religions responded that they were generally unfamiliar with the Supreme Court of Pennsylvania and its rulings when asked.
- Women were nine points more likely than men to admit unfamiliarity (75% vs. 66%).
- South Central Pennsylvanians showed the least familiarity with the court and its rulings (80%) while Philadelphia voters expressed the highest familiarity (35%).
- Forty percent of Catholics who frequently attend Mass said they were either "very" or "somewhat" familiar with the court.

Voters were even more in the dark about who actually presides on the Pennsylvania Supreme Court. An eye-popping 86% of respondents "pled the fifth" and said they did not know or could not recall any names of the current justices of any candidates running for the office. Among the miniscule number of those who actually *did* know a current justice or candidate's name, 4% were able to name Seamus P. McAffery, 2% named Max Baer, and 2% named Ronald D. Castille.

 Majorities of both men and women, as well as of all age groups, regions, Can you name any of the current Justices on the Supreme Court of Pennsylvania or any of the people who are currently running for that office? (OPEN-ENDED. PRE-CODED LIST. ACCEPTED MULTIPLE RESPONSES. VOLUNTEERED LIST.) PROBED: Can you name any others?

86% DO NOT KNOW/ CANNOT NAME ANY

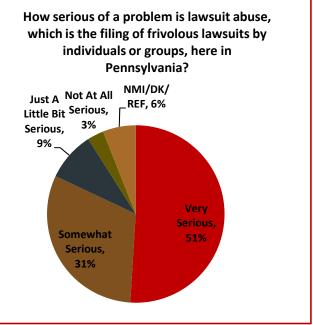
- 4% SEAMUS P. MCAFFERY
- 2% MAX BAER
- 2% RONALD D. CASTILLE
- 1% J. MICHAEL EAKIN
- 1% JANE CUTLER GREENSPAN
- 1% JOAN ORIE MELVIN
- 1% JACK PANELLA
- 1% THOMAS SAYLOR
- 1% DEBRA MCCLOSKEY TODD
- 1% OTHER
- 7% REFUSED

races, party affiliations, ideologies, religions confessed not knowing the names of any current or aspiring Supreme Court Justices.

- Females were six points more inclined than males to admit their ignorance (89% vs. 83%).
- Voters aged 45-54 stood out as most uninformed, with more than nine-in-ten (92%) unable to name a single Justice on the court (or candidate).
- Philadelphians were more "in the know" but still lacking on the whole: 77% of Philadelphia voters were unable to recall the name of a justice (vs. 88% of Southeastern, Southwestern, and South Central Pennsylvanians and 83% of North Pennsylvanians).
- Protestants who frequently attend religious services were the subgroup least capable overall of naming any current Pennsylvania Supreme Court justices or candidates: an overwhelming 97% of church-going Protestants (compared with the 84% of people who do not attend any religious services) could not name names.
- Eighty percent of respondents who earlier said they were familiar with the Supreme Court of Pennsylvania Supreme Court were unable to prove their knowledge by naming sitting jurists or candidates aspiring to sit on the bench.

Voters Recognize Gravity of Lawsuit Abuse in the Keystone State

Voters are much more certain in their opinions toward a topic that touches and concerns the judiciary: lawsuit abuse. More than four-in-five (82%) Pennsylvania respondents deemed "lawsuit abuse" – which was described as the filing of frivolous lawsuits by individuals or groups – as serious; 51% considered it "very serious." Twelve percent were tepid toward the situation, considering it to be "just a little bit serious" (9%) or "not at all serious" (3%).



 Majorities of voters across demographic and political lines fingered the problem as serious.

- Philadelphians stood out as more likely than the average to deem lawsuit abuse "just a little bit" or "not at all" serious (22%); still, 75% assessed it as a "very" or "somewhat" serious matter.
- Whites were also far more inclined than Blacks to deem lawsuit abuse either very or somewhat serious (84% to 70%).

- Republicans were more likely than Democrats and Independents to note the gravity of lawsuit abuse (87% of Republicans vs. 77% Democrats and 82% Independents).
- Likewise, conservatives were more apt than their liberal or moderate counterparts to deem lawsuit abuse a "serious" issue (87% of conservatives vs. 70% liberals and 81% moderates).

Support for changing the law to allow for caps on damages awarded in tort litigation outpaced opposition by nearly 2-to-1 (61% vs. 31%). Exactly two-in-five (40%) *strongly supported* limiting how much individuals can be awarded in tort claims, nearly double the 21% who *strongly opposed* the restrictions.

As you might know, a "tort" is a wrongful act by one individual that ends in injury to another. The phrase "tort reform" refers to changing state laws that place limitations or "caps" on the types of damages someone can be awarded in lawsuits when they sue the person or organization that they claim injured them. In Pennsylvania, the state constitution currently prohibits putting a "cap" on damages. Would you (ROTATED) support or oppose changing the law here in Pennsylvania to allow damages to be capped? (PROBED: And would that be STRONGLY or SOMEWHAT SUPPORT/OPPOSE?)

<u> </u>					,
	<u>61%</u>	TOTAL SUPPORT (NET)	<u>31%</u>	TOTAL OPPOSE (NET)	
	40%	STRONGLY SUPPORT	10%	SOMEWHAT OPPOSE	
	21%	SOMEWHAT SUPPORT	21%	STRONGLY OPPOSE	

- Whites were nearly 20 point more likely than Blacks to favor caps on damages (67% vs. 45%).
- From left to right, the strength of supporting damage caps increased: 54% of Democrats, 57% of Independents, and 72% of Republicans support changing to law to cap damages; 46% of liberals, 62% of moderates, and 71% of conservatives followed the same trend.
- With the exception of African-Americans and liberals, majorities of all demographic and political groups backed limitations on damages.
- African-Americans (52%), self-identified Democrats (40%) and liberals (45%) stood out as more likely than the average to oppose any ceilings on damage awards.

Respondents were asked to think about tort reform in terms of medical malpractice specifically. After being read one of the arguments for enacting caps on damages – that a lack of limitations deters doctors from practicing medicine in Pennsylvania – 73% of respondents said they would be "more supportive" of changing the law to permit legislators to limit damages. Fourteen percent shared that this argument made them less inclined to back ceilings on awards.

One of the reasons some people think Pennsylvania needs to enact tort reform is that the current system keeps doctors from practicing medicine here. The lack of limitations on damages means that the insurance companies that provide medical malpractice insurance to doctors cannot predict the risk of providing coverage to the doctors. This results in high premiums for doctors that make the cost of practicing medicine unaffordable. In fact, according to one survey, more than three-fourths of medical residents approaching the end of their training in Pennsylvania planned to practice somewhere outside of the state. Among those planning to leave, close to one-half cited high medical malpractice insurance costs as their reasons for leaving.

Does knowing this make you (ROTATED) more supportive or less supportive of changing the law in Pennsylvania to allow for caps on damages? (PROBED: And would that be MUCH or SOMEWHAT MORE/LESS SUPPORTIVE?)



72%	TOTAL SUPPORTIVE (NET)	14%	TOTAL NOT SUPPORTIVE (NET)
47%	MUCH MORE SUPPORTIVE	5%	SOMEWHAT LESS SUPPORTIVE
25%	SOMEWHAT MORE SUPPORTIVE	9%	MUCH LESS SUPPORTIVE

- Majorities of men (67%), women (78%), and voters of all ages, regions, and races said they would be more apt to back caps on damages knowing that medical professionals are leaving the state in droves.
- Sixty-eight percent of Independents and Democrats alike as well as 80% of Republicans – and 71% of liberals, 74% of moderates, and 75% of conservatives indicated that they would be more supportive of tort reform to enact limitations if more doctors would practice medicine.
- Voters aged 45-54 (21%), South Central residents (26%), and self-identified Democrats (18%) stood out as more likely than the average to say they would be less supportive; still majorities were more supportive.

When asked who or what should have the most influence in "making or reforming medical malpractice laws" in Pennsylvania, nearly one-in-three said that they themselves should be given the authority. One-in-five believed the responsibility – or privilege – should be handed to medical professionals (including doctors). Statistically-similar percentages wanted the onus – or opportunity – to be placed on the Pennsylvania Supreme

Who should have the most influence in making or reforming medical malpractice laws here in Pennsylvania?

32% VOTERS

- 20% DOCTORS AND MEDICAL PROFESSIONALS WHO PRACTICE IN PENNSYLVANIA
- 18% THE SUPREME COURT OF PENNSYLVANIA
- 17% PENNSYLVANIA LEGISLATORS
- 3% PENNSYLVANIA GOVERNOR

Court (18%) or Legislators (17%). Three percent thought the duty should be left to the Governor.

These data suggest that voters believe common sense to be a more important criterion in assessing the propriety of damages than either legal or medical knowledge.

- Pluralities of all major demographic and political groups affirmed that <u>voters</u> should be given the most influence in shaping Pennsylvania's medical malpractice laws.
- Men were nine points more likely than women to say <u>legislators</u> should have the most say in making medical malpractice laws (22% vs. 13%).
- Voters in Philly were more likely than the average to hand the scepter of power to the <u>Governor</u>, though only 8% did so.
- Self-identified Democrats were twice as likely as their Republican and Independent counterparts to cede the responsibility of reforming medical malpractice to the Supreme Court of Pennsylvania (24% vs. 12% vs. 12%). Voters in Philly (29%) also though the seven Justices are best suited for the task.

Voters Applaud State Supreme Court for Ruling on Ortiz v. Commonwealth

Fifty-six percent of Pennsylvanians agreed – including 39% strongly – with the 13-year-old decision from the Supreme Court of Pennsylvania that held only the state legislature has the authority to pass gun laws. Thirty-eight percent disagreed with the judgment.

As you might know, there is a chance that the Pennsylvania Supreme Court may soon hear a case regarding gun and firearm laws here in Pennsylvania. The current law came out of a case 13 years ago called Ortiz v. Commonwealth. There, the Supreme Court of Pennsylvania ruled that the state legislature is the only body that has the power to establish gun laws in the state and that municipalities cannot pass their own gun law ordinances.

Do you (ROTATED) agree or disagree with the Supreme Court of Pennsylvania's ruling that the state legislature should be the only body of government to establish gun laws here in Pennsylvania? (PROBED: And would that be STRONGLY or SOMEWHAT AGREE/DISAGREE?)

56%	TOTAL AGREE (NET)	38%	TOTAL DISAGREE (NET)
39%	STRONGLY AGREE	11%	SOMEWHAT DISAGREE
17%	SOMEWHAT AGREE	27%	STRONGLY DISAGREE

- There was only a five-point difference in opinions between gun-owning households and non-firearm households: fifty-nine percent of the former and 54% of the latter <u>agreed</u> with the *Ortiz* decision.
- A 14-point spread in opinion emerged across the genders, with 63% of men and 49% of women supporting the ruling of the court.
- Relatively similar feelings were held across party lines, but there was more disparity across the ideological spectrum. Whereas 56% of self-identified Democrats, 54% of

Independents, and 57% of Republicans agreed compared to 49% of liberals, 52% of moderates, and 61% of conservatives.

• Majorities of all regions <u>except for Philly</u> backed the court's position on *Ortiz*. Fifty-six percent of Philadelphians disagreed while majorities in all other regions agreed.

Pennsylvanians Overwhelmingly Want The Opportunity to Vote on Same-Sex Marriage Amendment...

When informed that 30 states in the nation have amendments defining marriage and explained the process of changing the Commonwealth of Pennsylvania's Constitution to allow for an amendment on marriage, 78% of respondents favored giving voters the opportunity to cast ballots on the issue, 16% opposed the idea. <u>Support for allowing the issue of marriage to come to the ballot crossed gender, age, racial, regional, political, and ideological lines. The only demographic group more likely than the average to oppose a ballot measure was self-identified Democrats (19%); still, three-quarters (76%) of the cohort backed putting marriage to the people.</u>

Pennsylvania's laws on traditional marriage and same-sex marriage are defined in statute only. Unlike 30 states in the nation, there is no constitutional amendment defining marriage here in Pennsylvania. In order to amend the constitution, both houses of the Pennsylvania legislature would first have to pass the amendment in two consecutive sessions. Then, the amendment would go on the ballot for an up-or-down vote by Pennsylvania voters. Regardless of how you would vote on the amendment, do you think Pennsylvania voters (ROTATED) should or should not have the opportunity to vote on an amendment to define marriage here in Pennsylvania as people in other 30 states have done? (PROBED: And would that be DEFINITELY or PROBABLY SHOULD/SHOULD NOT HAVE THE OPPORTUNITY TO VOTE ON AN AMENDMENT?)

	UPPORTUNITY TO VOTE		AIVIENDIVIENT!
78%	TOTAL SHOULD HAVE OPPORTUNITY	<u>16%</u>	TOTAL SHOULD NOT HAVE OPPORTUNITY
	<u>(NET)</u>		<u>(NET)</u>
63%	DEFINITELY SHOULD HAVE THE	4%	PROBABLY SHOULD NOT HAVE THE
	OPPORTUNITY		OPPORTUNITY
15%	PROBABLY SHOULD HAVE THE	12%	DEFINITELY SHOULD NOT HAVE THE
	OPPORTUNITY		OPPORTUNITY

...And Want Their Declared Intentions to "Stick"

If voters were to pass an amendment to the Pennsylvania Constitution on marriage, more than two-in-three voters would deem it "inappropriate" for the seven Justices to overturn the hundreds of thousands of votes cast on the amendment.

If voters in Pennsylvania were to pass an amendment on marriage, do you think it would be appropriate or inappropriate for the Pennsylvania Supreme Court to overturn the amendment as passed by state legislators and the voters of the state? (PROBED: And would that be VERY or SOMEWHAT APPROPRIATE/INAPPROPRIATE?)

25%	TOTAL APPROPRIATE (NET)	<u>68%</u>	TOTAL INAPPROPRIATE (NET)
15%	VERY APPROPRIATE	16%	SOMEWHAT INAPPROPRIATE
10%	SOMEWHAT APPROPRIATE	52%	VERY INAPPROPRIATE

- Again, voters wanted the will of the people to stand: voters across the demographic and political spectra expressed the superiority of the ballots over the bench.
- Voters in Philadelphia (36%), self-identified Democrats (31%), and liberals (38%) were more likely than the average voter to believe it "appropriate" for the Pennsylvania Supreme Court to overturn an amendment passed by voters

In Conclusion...

Pennsylvania voters have high expectations for the seven justices on the Pennsylvania Supreme Court to interpret the law as it is written and not incorporate personal viewpoints into rulings and decisions. When voters go to the ballot box next month to select the newest Pennsylvania Supreme Court Justice, they will look for a candidate who promises to exercise this type of restraint. Though voters admitted they may not know the details of the court's composition or its recent rulings, they have senses of how the court should operate and the underlying philosophies and approaches that should guide it.

Keystone State voters appreciate the roles they play in the selection of justices and want to retain the use of elections. They reject the proposition of using nominating commissions in place of the current method, refusing to cede their influence to small groups of lawyers (as is often the case in other states). In a similar vein, voters appreciate the opportunities they have to exercise their rights to influence the law-making process and do not wish to see the Pennsylvania Supreme Court supersede or reverse decisions made at the ballot box.

With respect to tort reform, voters offered overwhelming endorsements for changing Pennsylvania laws on damage limitations. Majorities across political and demographic lines favored capping how much individuals can recover in damages, and they were particularly supportive of limits when made aware of the affects of an unpredictable legal system on their abilities to access to healthcare. The plurality of voters said that citizens should have the greatest influence in changing medical malpractice rules, but for the most part, the electorate's responses reflected the need for an "all-hands-on-deck" approach to reform. Respondents believed there to be places for legislators, doctors, and the court in reshaping (and improving) Pennsylvania's malpractice climate.

METHODOLOGY

On behalf of **The Federalist Society**, **the polling company™**, **inc./WomanTrend** conducted a statewide telephone survey of 500 registered voters in Pennsylvania.

Interviews were conducted September 23-27, 2009 at a Computer-Assisted Telephone Interviewing (CATI) facility using live callers. The sample was drawn using a list of registered voters in Pennsylvania. Respondents were then screened to ensure that they were registered to vote.

The margin of error for the survey is +/-4.38% at a 95% confidence interval, meaning that in 19 out of 20 cases, the data obtained would not differ by any more than 4.38 percentage points in either direction had the entire population of registered voters in Pennsylvania been surveyed. Margins of error for subgroups are higher.

For additional inquiries, please contact Kellyanne Conway, President & CEO of **the polling company™, inc./WomanTrend** or Karen Bentley Steward, Research Analyst, at 202-667-6557 or <u>Kellyanne@pollingcompany.com</u> or <u>ksteward@pollingcompany.com</u>.