

Judicial Retention: The State Supreme Court

Pennsylvania voters will be asked on November 4 whether to give three Justices on the PA Supreme Court more time on the bench.¹ Do these elections really matter? Yes. Here's why.

If Republicans succeed in their stated goal of getting Pennsylvanians to vote "no," they could set the stage for a total remaking of the court. However, even if they get "no" votes, it won't guarantee a Republican majority of the Commonwealth's highest court.

All three Justices up for retention were elected as Democrats in 2015, and their party has held a majority on the court ever since. The seven-member court currently has five Justices elected as Democrats and two as Republicans.

The Pennsylvania Bar Association has recommended all three Justices for new terms.

Two Judges on lower appellate courts are also up for retention; both were also elected as Democrats. Voters will decide whether to give Alice Dubow another term on the Superior Court, and whether Michael Wojcik should have another term on the Commonwealth Court.

How does the process work?

Judicial retention elections in Pennsylvania were established to ensure accountability while preserving judicial independence. After serving an initial 10-year term, Judges and Justices appear on the ballot for a simple "yes" or "no" vote to determine whether they will serve another 10 years.

Political affiliations are not listed on the ballot because retention elections are not partisan. Voters should be focused, instead, on qualifications and performance. Unlike federal judges with lifetime appointments, Pennsylvania voters have a direct say in whether judges remain on the bench.

If the vote is "yes," the judge stays on. If it is "no," the governor can appoint a temporary replacement subject to the approval of the state Senate. An election for a replacement to serve a full 10-year term is then held in the next odd year, which means that if a Judge isn't retained this year, voters won't pick a long-term replacement until 2027.

Mandatory Retirement

Pennsylvania Judges must, however, retire at age 75, a change approved by voters in 2016 to increase the mandatory age from 70. This requirement is established by the Pennsylvania Constitution and applies to all Judges, including those on the Supreme Court, Superior Court, Commonwealth Court and Magisterial District Judges.

Pennsylvania Supreme Court²

Christine Donohue

Justice Donohue is 72 years old, and will be required to retire at age 75 if she is retained for an additional 10 years. In that case, the governor will appoint her temporary replacement subject to the approval of the state Senate.

¹ PA Election 2025: What is judicial retention and why does it matter for Supreme Court balance?

<https://www.spotlightpa.org/news/2025/09/judicial-retention-supreme-court-2025-guide-elections/>

² A Nonpartisan Guide to the 2025 Pennsylvania Supreme Court Retention Election, <https://guides.vote/guide/a-nonpartisan-guide-to-the-2025-pennsylvania-supreme-court-retention-election>

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- **On abortion**, Donohue wrote, “the Pennsylvania Constitution secures the fundamental right to reproductive autonomy.” And that “includes a right to decide whether to have an abortion or to carry a pregnancy to term.”
- **On education**, she agreed that a lower court should hold a trial on whether state officials are failing to adequately and equitably fund public education.
- **On gun policy**, in a dispute over a city’s restriction on the location of gun ranges, Donohue wrote that “engaging in firearms proficiency training on... private residential property is not covered” in “the Second Amendment.”
- **On LGBTQ rights**, Donohue wrote, “As judges we must educate ourselves on all LGBT issues, including the insidious nature of crimes directed at members of the LGBT community.”
- **On marijuana**, Donohue agreed that given medical marijuana’s legal status in Pennsylvania, the smell of marijuana cannot be the sole reason for a warrantless vehicle search. She also agreed that people under court supervision should be allowed to use medical marijuana.
- **On redistricting**, she agreed that the state legislature’s 2011 redistricting plan was an unconstitutional gerrymander.
- **On voting**, Donohue ruled that when a voter’s mail-in ballot is rejected because of a disqualifying mistake, that voter must still be allowed to cast a provisional ballot on Election Day. She opposed a ruling throwing out mail-in ballots that didn’t have the correct date.
- **On 2020 election modifications**, Donohue agreed that the candidate names should not be included because “procedures for nominating a candidate for office by nomination papers were not strictly followed.”³ She also agreed to allow mail-in ballots to arrive up to three days after the polls close on Election Day.⁴
- **On PA shutdown during Covid**, Donohue wrote the case “presents issues of immediate and immense public importance impacting virtually all Pennsylvanians and thousands of Pennsylvania businesses.”⁵

Kevin Dougherty

Justice Dougherty is 63 years old. If he is retained, he will serve until 2035 at which time he will be 73 years old.

- **On abortion**, Dougherty agreed that a lower court must hear a challenge to a law that limited the use of Medicaid funding to cover abortions. He has not indicated whether the Pennsylvania Constitution guarantees a fundamental right to abortion.
- **On education**, he wrote that the Court had a clear duty to consider whether Pennsylvania citizens’ Constitutional rights to “a proper public education” are being violated by inadequate funding.
- **On gun policy**, Dougherty wrote that a city’s restriction on the location of gun ranges is “consistent with the Nation’s historical tradition of firearm regulation” and “outside the Second Amendment’s unqualified command.”
- **On LGBTQ rights**, about the decision allowing same-sex couples to adopt children in PA, Dougherty said, “We have hundreds of thousands of children sitting in out-of-home placement, wishing they had a permanent and loving family. That one decision permitted many, many, many, many, many children to find loving homes. That’s phenomenal, the impact of one decision.”
- **On marijuana**, he agreed that people under court supervision should be allowed to use medical marijuana.

³ Pennsylvania Supreme Court rules Green Party will not appear on state’s 2020 general election ballot,

<https://abcnews.go.com/Politics/pennsylvania-supreme-court-rules-green-party->

⁴ Pennsylvania Supreme Court extends state’s mail ballot deadline, <https://abcnews.go.com/Politics/pennsylvania-supreme-court-rules-green-party-states-2020>

⁵ Pennsylvania Supreme Court Weighs In: Covid-19 Shutdown is not an Unconstitutional Taking,

<https://www.ballardspahr.com/insights/alerts-and-articles/2020/04/pa-supreme-court-weighs-in-covid-19-shutdown>

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- **On mental health issues** in the Justice system, he said “We don’t have to lock people up because they have mental illness or because they are different. We need to be able to find out what the root cause is and divert them, particularly veterans. I’m a strong supporter of veteran courts.”
- **On redistricting**, Dougherty agreed that the state legislature’s 2011 redistricting plan was an unconstitutional gerrymander.
- **On voting**, he agreed that when a voter’s mail-in ballot is rejected, that voter’s provisional ballot must still be counted.
- **On 2020 election modifications**, Dougherty agreed that the candidate names should not be included because “procedures for nominating a candidate for office by nomination papers were not strictly followed.” He also agreed to allow mail-in ballots to arrive up to three days after the polls close on Election Day.
- **On PA shutdown during Covid**, Dougherty wrote in a concurring and dissenting opinion that delegating powers from the General Assembly to the Governor violates the constitution’s separation of powers.⁶

David Wecht

Justice Wecht is 63 years old. If he is retained, he will serve until 2035 at which time he will be 73 years old.

- **On abortion**, Wecht wrote that women have a “right to reproductive autonomy.” “The Pennsylvania Constitution’s ERA did away with the antiquated and misogynistic notion that a woman has no say over what happens to her own body.”
- **On education**, he ordered a lower court to hold a trial on whether state officials are failing to adequately and equitably fund public education. He saw validity in the claim that “distribution of state funds results in widespread deprivations in economically disadvantaged districts,” limiting “the resources necessary to attain a constitutionally adequate education.”
- **On gun policy**, Wecht agreed that a city’s restriction on the location of gun ranges is “consistent with the Nation’s historical tradition of firearm regulation.”
- **On LGBTQ rights**, he is a “firm believer in equality” and was “personally thrilled” when same-sex marriage was legalized.
- **On marijuana**, Wecht agreed that given medical marijuana’s legal status in Pennsylvania, the smell of marijuana cannot be the sole reason for a warrantless vehicle search. He also agreed that people under court supervision should be allowed to use medical marijuana.
- **On redistricting**, he agreed that the state legislature’s 2011 redistricting plan was an unconstitutional gerrymander.
- **On voting**, Wecht opposed a decision allowing a voter’s election-day provisional ballot to be counted when that voter’s mail-in ballot had a disqualifying mistake, such as failure to place a returned ballot in a secrecy envelope.
- **On 2020 election modifications**, Wecht agreed that the candidate names should not be included because “procedures for nominating a candidate for office by nomination papers were not strictly followed.” He also agreed to allow mail-in ballots to arrive up to three days after the polls close on Election Day.
- **On PA shutdown during Covid**, Wecht, writing for a four-Justice majority, agreed that the majority based its decision on separation of powers principles, holding that current members of the General Assembly decided to delegate power to the Governor.

The Closing Argument

There was a recent case that upended Accelerated Rehabilitative Disposition (ARD) for first offense DUI cases. Justice Donohue and Justice Wecht said that a prior ARD for a DUI offense is not a first offense for a subsequent DUI (contrary to what the DUI sentencing statute says). Justice Dougherty said that it was (he

⁶ Pennsylvania Supreme Court Rejects Legislators’ Attack on Governor’s Covid-19 Emergency Proclamation, <https://www.ballardspahr.com/insights/alerts-and-articles/2020/07/pennsylvania-supreme-court-rejects-legislators-attack-on-governors>

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agreed with the statute as written). The end result is that several District Attorneys across the commonwealth have stopped giving ARD for first time DUI offenders. Is that good or bad? We don't know what voters will think, but what we do know is that just because all three Justices ran as Democrats doesn't mean they always vote together.

And, if we vote "no" to all three Justices that will result with a four member PA Supreme Court (2 Democrats and 2 Republicans) until the legislature and the governor agree on temporary appointments or the next election. The ARD case above would have split 2-2 if those up for retention weren't included. An even split doesn't change what the lower court decided. Given how well the legislature and the governor are doing trying to pass a budget, we would have a court which might be pretty ineffective until 2028 when the new Justices would be sworn in.

As always, Operation Wildfire presents the facts to help you make the best decisions for you as you complete your ballot. But we'll close with a statement and a question: Many in favor of "no" votes for retention also cite the need to limit the terms of judges to one, 10-year term. If you agree, will you also agree when the Republicans on the courts stand for retention? Just a parting thought. Please remember to vote!