

On Your November Ballot: Judicial Races

Pennsylvania voters will begin casting ballots as soon as they are available. Operation Wildfire hopes that by now we've convinced you to apply for your Election Day insurance policy to show your family, friends, neighbors and coworkers that you value your right to vote. If you haven't applied and/or you'd like more information about mail-in ballots, visit www.operationwildfire.org. We've covered why to apply, as well as how to complete and return your ballot.

Operation Wildfire is receiving very positive feedback about the information we're providing to our readers, and we appreciate what we're hearing. That's why, in this issue, we don't want to repeat ourselves about the candidates and the courts; instead, we'll provide links to refresh the knowledge you gained before the 2023 Primary Election. We'll begin at the top of the ballot with the Pennsylvania Courts.

The Pennsylvania Courts

Operation Wildfire believes that the citizens of Pennsylvania deserve and need jurists who will interpret the law fairly and objectively based on facts and by following legal precedent and practice, never legislating from the bench. Your vote matters because our system works best when each branch of government sticks to its job. We believe that we do not need jurists that attempt to usurp the role of the state legislature and/or are motivated by political interests. For that reason, Operation Wildfire provides the following additional information for your consideration as you prepare to vote for these all-important positions on our courts:

Supreme Court: Judge Carolyn T. Carluccio v. Judge Daniel McCaffery

There is one open position available on the Court. We believe Judge Carluccio will defend the Constitution, interpret and apply the law as it is written, and restore balance and trust to our judicial branch. Unlike her opponent, who, when asked if he will defend the Constitution answered "which one?"

Judge Carluccio is "Highly Recommended" by the Pennsylvania Bar Association, which called her a "highly respected jurist" ahead of this year's primary. Carluccio wrote that she "wants a justice system that is fair and impartial." She also called her "diverse court experience" an asset, citing her experience in prosecution and defense as well as in family and civil cases.¹

Of Note: Planned Parenthood Votes, a Super PAC that supports abortion access, has launched a scathing television advertisement against Judge Carluccio. The advertisement calls Carluccio "a threat to our abortion rights" in Pennsylvania. The seven-figure ad buy marks the PAC's largest investment in a state Supreme Court race.² But, remember, in Pennsylvania, abortion is legal up to the Roe v. Wade standard of 24 weeks, longer if the mother's health is in danger.

In response to the attacks, Judge Carluccio said that she rejects "judicial activism" and that "women's reproductive rights are protected by Pennsylvania law." "I will uphold that law, and only the Governor and legislature can change it," she added.³

Her opponent, Judge Daniel McCaffery has a long history in Democratic politics. That political record lost him an endorsement from the *Philadelphia Inquirer* during the primary, which backed his opponent and wrote that McCaffery is enmeshed in party politics."⁴

Judge McCaffery was named in 2014 news reports detailing then-Attorney General Kathleen Kane ending a sting operation that had captured Philadelphia lawmakers illegally accepting money. McCaffery, who like many Democrats had been a Kane supporter, had accepted some of those illegal "straw" donations (in which a person obfuscates their political contributions by donating through other people) during his unsuccessful 2009 bid for Philadelphia district attorney. McCaffery's campaign returned the checks and reported the incident after discovering the donations were improper.⁵

McCaffery is "Highly Recommended" by the Pennsylvania Bar Association, which wrote that he has "sound knowledge of legal principles" and a history of "community involvement." At a candidate forum for Pennsylvanians for Modern Courts,

¹ WHYY.org, September 6, 2023, "PA election 2023: A complete guide to the candidates for Pa. supreme court"

² TheGuardian.com, September 21, 2023, "Abortion Rights Activists Spend Record Amounts in PA Race"

³ WHYY.org, September 6, 2023, "PA election 2023: A complete guide to the candidates for PA supreme court"

⁴ Ibid.

⁵ WHYY.org, September 6, 2023, "PA election 2023: A complete guide to the candidates for PA supreme court"

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Judge McCaffery said, “It’s a combination of life experience and judicial experience and legal experience that makes me want to run for this particular spot.”⁶

Operation Wildfire published an issue paper in May about the role and responsibilities of the PA Supreme Court and the candidates who wish to serve on Pennsylvania’s highest court. You can find that information at this link:

<https://img1.wsimg.com/blobby/go/54f0073b-0e7e-40da-a799-954327229939/downloads/Supreme%20Court.pdf?ver=1694737991133>

Superior Court: Maria Battista, Jill Beck, Judge Timika Lane and Judge Harry F. Smail, Jr.

You may select two candidates. Operation Wildfire believes Battista and Smail will be fair, impartial and will interpret the law. Judge Smail’s rulings reflect a fidelity to the text of the law and demonstrate his belief that a judge must not legislate from the bench. Both will bring strong communication skills and proper judicial temperament to the bench.

Maria Battista

In a survey by the Pennsylvania Coalition for Civil Justice Reform, a nonprofit that primarily advocates for friendlier laws for the health care industry and other business interests in civil cases, Battista wrote that former U.S. Supreme Court Justice Antonin Scalia is her judicial role model. She said that “it is not the role of a judge to legislate from the bench, and this is even more important when dealing with constitutional matters.”⁷ The Pennsylvania Bar Association did not recommend her, after she declined to participate in their judicial evaluation process.

Judge Harry F. Smail, Jr.

Judge Smail has been a Westmoreland County Court of Common Pleas Judge since appointed by Tom Corbett in 2014. Before that, he was a private practice attorney. In questionnaires, Judge Smail has said his judicial philosophy resembles those of Justice Scalia and sitting U.S. Supreme Court Justice Neil Gorsuch. Gorsuch, Smail wrote to the Pennsylvania Coalition for Civil Justice Reform, “has a very reasoned review of facts. He is not afraid to make a decision that will make for a more efficient ... adjudication of the law with a correct outcome.”⁸

In 2020, Judge Smail ruled against the Westmoreland County Board of Elections in a case brought by a Republican candidate for State Senate in an extremely close race. He ordered the board to throw out 204 provisional ballots cast by people who were wrongly told by election workers that they also needed to sign their precinct’s poll book. By signing the book, the voters erroneously indicated they had also cast a ballot using a voting machine.⁹

Judge Smail ruled that the Westmoreland election board did not conduct due diligence when it accepted those 204 votes without “further substantiating evidence” that voters hadn’t voted twice. “While the Court is loath to impose the consequences of a failure of the Board onto an innocent electorate ... the court must apply the provisions of the Elections Code consistently and as written by our legislature,” Judge Smail wrote in the 12-page decision.

The Pennsylvania Bar Association rated Judge Smail “Recommended” “based on his extensive background, legal ability and temperament.”

Jill Beck

Beck also ran for Superior Court in 2021 but lost in the primary to Timika Lane of the Philadelphia Court of Common Pleas.

Speaking at a candidate forum hosted by Pennsylvanians for Modern Courts during the primary, Beck said the U.S. Supreme Court Justice she would most like to emulate is Justice Anthony Kennedy, who she described as a jurist who “transcended partisan politics.” She said she believes in a judiciary that is “engaged but restrained.” “He was someone who you would not know which way he was going to come out on a case,” Beck said. “He was a consensus-builder, a tiebreaker. And that is something that I would love to be viewed as when I’m on the court myself.”

The Pennsylvania Bar Association rated Jill Beck “Highly Recommended,” writing that Beck possesses “the highest combination of legal ability, experience and integrity.”

⁶ WHYY.org, September 6, 2023, “PA election 2023: A complete guide to the candidates for PA supreme court”

⁷ Ibid.

⁸ Ibid

⁹ Ibid.

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Judge Timika Lane

In a candidate forum hosted by Pennsylvanians for Modern Courts, Lane described her courtroom as a safe space for “people to tell their truth.” She said her judicial philosophy includes ensuring that everyone in her courtroom will receive a fair trial, and named U.S. Supreme Court Justice Ketanji Brown Jackson as a role model that she hopes to emulate if elected to Superior Court. Lane said that it is essential to create a court environment in which “every person that appears before the court” is treated with respect.

The Pennsylvania Bar Association rated Judge Lane as “Highly Recommended,” saying that it is “confident the candidate is capable of outstanding performance as a Superior Court of Pennsylvania Judge.”

Operation Wildfire published an issue paper in May about the role and responsibilities of the PA Superior Court and the candidates who wish to serve on the court. You can find that information at this link:

<https://img1.wsimg.com/blobby/go/54f0073b-0e7e-40da-a799-954327229939/downloads/Superior%20Court.pdf?ver=1694737991133>

Commonwealth Court: Megan L. Martin v. Judge Matt Wolf

There is one position open on the Court. Operation Wildfire believes Martin will bring an understanding of separation of powers, will be a fair and impartial judge who protects our rights and freedoms, and will always follow the Constitution and the law.

Martin has said that U.S. Supreme Court Justice Samuel Alito and State Supreme Court Justice Kevin Brobson come closest to representing her judicial philosophy. “I am a strict constructionist,” she wrote in response to a survey by the Pennsylvania Coalition for Civil Justice Reform, a nonprofit that primarily advocates for friendlier laws for the health care industry and other business interests in civil cases. “I am a textualist and an originalist; I do not believe the constitution is a ‘living document.’”¹⁰

The Pennsylvania Bar Association (PBA) rated her as “Recommended,” saying that Martin’s “substantial administrative law experience will serve her well.”

Megan Martin’s opponent, Judge Matt Wolf sits on the Philadelphia Municipal Court, where he has served as a judge since 2017 and hears both civil and criminal cases. He said in his Pennsylvania Bar Association questionnaire that many of his cases centered on civil rights law during his time as a trial attorney, with a focus on employment claims and government misconduct.¹¹

During a candidate forum hosted by nonprofit advocacy group Pennsylvanians for Modern Courts, Wolf said his judicial philosophy includes restraining judicial activism, which he called “not-productive.” He also said he thinks the state’s judicial ethics standards in Pennsylvania should be kept as they are, calling them “sufficient.”

“I don’t believe that it is productive to be activist at all and change things for the sake of a political reason,” Wolf said.

The Pennsylvania Bar Association rated him as “Recommended,” saying that his writing is “clear and concise,” and noting that he has a history of public service.

Operation Wildfire published an issue paper in May about the role and responsibilities of the PA Commonwealth Court and the candidates who wish to serve on the court. You can find that information at this link:

<https://img1.wsimg.com/blobby/go/54f0073b-0e7e-40da-a799-954327229939/downloads/Commonwealth%20Court.pdf?ver=1694737991133>

Centre County Court of Common Pleas: Judge Julia Rater

As you know, Operation Wildfire supported Julia Rater in the Primary, which she won on both the Democrat and Republican ballots. With the recommendation of the State Senate and consent of the Governor, she was seated early in order to fill the remaining months of retiring President Judge Pamela Ruest’s term. Judge Rater will be on the ballot in November for a full ten-year term.

Judges Running for Retention: President Judge Jack A. Panella and Judge Victor P. Stabile

The Pennsylvania Bar Association has recommended both for retention on the Superior Court. Operation Wildfire agrees.

¹⁰ WHYY.org, September 6, 2023, “PA election 2023: A complete guide to the candidates for PA supreme court”

¹¹ Ibid.