

Judicial Selection A Hot Topic

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The debate over the process by which judges are selected continues to be a hot topic across the nation. Many groups including the League of Women Voters of Ohio have engaged in ongoing efforts to develop ideas for judicial selection. From the November 2009 Conference on Judicial Selection, the League and other groups agreed to continue to develop ideas including merit selection and retention elections.

Former U.S. Supreme Court Justice Sandra Day O'Connor has been a leading voice for reform. The legal resource, Gavel Grab, posted a commentary on [Justice O'Connor's op ed](#) in the May 21, 2010 *New York Times* regarding appointment and retention elections.

From GAVELGRAB at <http://www.gavelgrab.org/?p=10917>

[O'Connor: 'Take Justice off the Ballot'](#)

[Peter Hardin](#) May 24th, 2010 | Category: Selection, Sandra

Retired Supreme Court Justice Sandra Day O'Connor lays out a vigorous and detailed argument for merit selection of state judges in [a New York Times commentary](#), headlined "Take Justice off the Ballot."

Only last week, Justice O'Connor was feisty when she lit into big special-interest spending in judicial elections before a Chicago Bar Association audience.

Recalling a \$9 million state Supreme Court election, where the winner received his largest donations from a company with an appeal pending before the court, she asked the audience, "You like that?"

The op-ed piece takes a more explanatory approach to reform through merit selection of judges. It maintains that "citizens are being shortchanged by the way...judges are chosen" in too many states, and it is time to strike a balance between lifetime appointments at one end of the selection spectrum and partisan elections at the other:

"A better system is one that strikes a balance between lifetime appointment and partisan election by providing for the open, public nomination and appointment of judges, followed in due course by a standardized judicial performance evaluation and, finally, a yes/no vote in which citizens either approve the judge or vote him out. This kind of merit selection system - now used in some form in two-thirds of states - protects the impartiality of the judiciary without sacrificing accountability."

In state courts, Justice O'Connor continues, where more than 100 million cases are brought per year, "the last thing you want to worry about is whether the judge is more accountable to a campaign contributor or an ideological group than to the law."

One by one, Justice O'Connor examines criticisms raised about merit selection of judges.

Regarding the criticism that merit selection benefits insiders, and lawyers dominate candidate screening commissions that in turn hold secret meetings, Justice O'Connor points to the example of her home state. Non-lawyers dominate the commission there, and public meetings are held, she writes.

Regarding the argument that merit selection takes away voters' chance to pick judges, Justice O'Connor points to merit selection states where citizens can go to the polls for up-or-down "retention" votes on keeping their

judges, better armed with information about the jurists and their records than often is the case where partisan elections are held.

Justice O'Connor notes that lawmakers in Minnesota have debated asking voters whether to turn to merit selection, and a ballot question on merit selection will come before Nevada voters in the fall.

"We should cheer Minnesota and Nevada as they pursue impartial courts and create for their citizens that one safe place. Other states should soon follow suit," Justice O'Connor concludes. You can learn more about her advocacy from [Gavel Grab](#), and about judicial appointment and retention systems from Justice at Stake's [issues page](#).

The LWVO agrees that an appointment and retention process would give voters better information regarding judicial candidates while continuing to provide them the opportunity to vote to retain or release a judge from service based upon their performance on the bench rather than the influence of politics.

For more information on this topic and other imPACT topics go to www.midwestdemocracynetwork.org and www.justiceatstake.org