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A Proposal for

Strengthening Judicial Elections

May 2013

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Ohio Courts 2013: A Proposal for Strengthening Judicial Elections

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May 2013 marks 45 years since Ohio last enacted comprehensive reforms in the judicial system with the passage of the 1968 Modern Courts Amendment. This anniversary also happens to fall in the year when Ohio is already engaged in a process of reevaluating the foundations of our system of government, as the Ohio Constitutional Modernization Commission meets to systematically examine our state's governing document and discuss potential improvements. From the perspective of the Ohio judiciary, I believe 2013 is an opportunity for us to come together to address an issue of critical importance that was set aside in that historic reform package 45 years ago, but has continued to generate discussion and controversy ever since. It is time for Ohio to address the issue of judicial selection.

In a constitutional democracy the judicial branch is a bedrock institution that resolves disputes, ensures order by adjudicating criminal offenses, and protects the rights of minorities and individuals. Judges are the officials in whom we trust these awesome responsibilities. Thus, there are few matters more important in our democracy than ensuring we have a system in place that results in the best possible men and women serving on the bench. Since the founding of the republic, each state in our federalist system has evolved its unique method for selecting judges. The one thing they all have in common is that each state attempts in its own way to balance the competing interests of accountability and independence. We want judges who are accountable to the democratic electorate they serve while also being independent for the purpose of impartially resolving the disputes before them without regard to special interests or other political considerations. What is the best way to do this in Ohio? Can we improve the system we have? This paper examines the history of judicial selection in Ohio, reviews recent reform efforts, and proposes an eight-point plan for public consideration and a process for bringing people together to reach consensus on judicial reforms.

A central piece of the 1968 Modern Courts Amendment as originally proposed was judicial selection reform, but that was stripped out by the legislature.[1] Thoughtful people have discussed the topic ever since, and I believe now is the time to come together as a state and to arrive at a package of improvements we can enact into law. This plan starts with two important premises: First, Ohioans have made it clear that they want their judges elected, not appointed. Second, within our current elected system, there are areas for improvement.

[1] William T. Milligan and James E. Pohlman, "The 1968 Modern Courts Amendment to the Ohio Constitution." *Ohio State Law Journal* 29, (1968): 817. The original legislative resolution that ultimately was adopted by Ohio voters as the 1968 Modern Courts Amendment contained a proposal for the Missouri Plan that was removed in the Ohio House of Representatives

Judicial Selection in Ohio: Electoral Accountability, Judicial Independence

In 1940, Missouri became the first state to adopt a new system for selecting judges, doing away with competitive contests between two candidates in favor of a system in which candidates are first appointed to the bench by the governor, then run in an up or down retention election. Since that time, 11 states have adopted some version of what is now known as the "Missouri Plan."[2] Were it not for the fact that Ohio voters two years earlier resoundingly rejected the same idea, it might well have been known as the "Ohio Plan."

Since Ohio voters rejected doing away with their right to vote by a 2-1 margin in the election of 1938, the idea has resurfaced in serious fashion at least four times, each time suffering its own form of defeat, either at the ballot box (1987), or in the legislature (1968), or before even getting off the drawing table (2003, 2009).[3] Lest anyone harbor the misjudgment that eliminating judicial elections in Ohio might still have its day, a recent poll found that Ohio voters like the idea even less now than they did 75 years ago.[4] Even in Missouri, there are calls to abolish the Missouri plan and return to an election-based system.[5]

The history of judicial selection reform in Ohio and nationally is one of a series of reforms all aimed at the same goal: to balance two equally important, but at times, countervailing interests, the need for accountability to the people balanced against the need for impartial and independent courts. For the first half century of statehood, Ohio resolved this balance in a way intended to favor independence over direct democratic accountability. As with every other state at the time, Ohio selected its judges through elections held not among the general electorate, but among the people's elected representatives in the General Assembly.[6]

With the rise of direct democracy in the Jacksonian period, a number of states began to enact constitutional reforms placing the selection of judges directly before the voters in popular elections. Ohio enacted this reform with the Constitution of 1851. In the latter half of the 19th

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[2] Chris W. Bonneau and Melinda Gann Hall *In Defense of Judicial Elections* (New York: Routledge, 2009), 3. The states are Colorado, Florida, Indiana, Iowa, Oklahoma, Tennessee, Utah, Arizona, Nebraska, South Dakota, and Wyoming.

[3] Milligan, "The 1968 Modern Courts Amendment", 811, 817. The original legislative resolution that ultimately was adopted by Ohio voters as the 1968 Modern Courts Amendment contained a proposal for the Missouri Plan that was removed in the Ohio House of Representatives. Voters in 1987 rejected a constitutional amendment for a system similar to the Missouri Plan. The late Chief Justice Moyer convened experts in 2003 and 2009 to pursue an appointive elective system. Neither effort advanced to the legislature or the ballot.

[4] Darrell Rowland," Poll: Ohioans Support System of Selecting Judges," *Columbus Dispatch* (December 12, 2012). http://www.dispatch.com/content/stories/local/2012/12/12/12-justice-selection.html More than 80 percent of survey respondents said they would oppose doing away with competitive elections in a poll by Quinnipiac.

[5] Elizabeth Crisp, "Election won't End Fight Over Judicial Selection Conservatives Want More Voter Input and Less Control by Governor and Trial Lawyers," *St. Louis Post-Dispatch* (Missouri) (October 27, 2012): A1.

[6] Thomas Suddes, "*Knowledge Gaps in Metropolitan Ohio: Ohio Supreme Court Contests, Newspaper Editorial Pages, and the Cue-Less Reader, 1938-1998*" (Master's Thesis, Ohio University, 2002), 13.

century, judicial elections in Ohio were dominated by party bosses, straight ticket voting, and a general undue influence of partisan party politics.[7] This gave rise to a movement to curtail partisan influence on judicial contests that was part of the larger Progressive Movement, culminating in the passage of the Non-Partisan Judiciary Act of 1911, which eliminated party affiliation on the general election ballot in Ohio, but retained it in the primaries.[8] So, judges in Ohio for more than 100 years have been put in the awkward position of running as Democrats and Republicans in partisan primaries in the spring, then ostensibly shedding their partisanship in November when they run in the nonpartisan general election. Ohio is the only state in the union with such an arrangement.[9]

Almost as soon as most states moved toward direct popular election of judges along with Ohio in the late 19th century, there were those who called for reform. Many states in the early 20th century took a similar approach to Ohio, taking various measures to minimize or do away entirely with the influence of political parties on the process. But the defining judicial selection reform proposal of the 20th century that has dominated judicial selection discussions to this day is the Missouri Plan. In 1937, the American Bar Association first proposed a plan it called "merit selection," an approach meant to combine the best aspects of democratic accountability and judicial independence.[10] The anti-judicial election movement has been particularly strong in the last 20 years, with the American Bar Association and the Ohio State Bar Association both pursuing an agenda that has taken various forms over the years, but fundamentally has advocated the same underlying goal of abolishing competitive judicial elections. They have been joined by good government groups like the League of Women Voters. And they have an ample well of academic sentiment to draw from, with a broad base of literature in law journals, political science journals, and other sources criticizing judicial elections and calling for states to adopt some form of the Missouri Plan.[11]

Recently, however, there is growing recognition that so-called merit-selection systems like the Missouri Plan are not without flaws, that judicial elections have distinct advantages, and that some of our assumptions about judicial selection might be misguided. In 2009, two political science professors conducted an expansive empirical study of the effects of judicial elections and demonstrated that many of the popular criticisms are not supported by the facts. For example, they examined various studies on judicial quality and found no evidence to support

[7] Ibid.,18-19.
[8] Ibid., 25.
[9] G. Alan Tarr and Mary Porter, *State Supreme Courts in State and Nation* (New Haven: Yale University Press, 1988), 126.
[10] Philip L. Dubois, *From Ballot to Bench: Judicial Elections and the Quest for Accountability* (Austin: University of Texas Press, 1980), 4-5.
[11] For a good overview see: Charles Gardner Geyh, "Perspectives on Judicial Independence: Why Judicial Elections Stink," *Ohio State Law Journal* 64, (2003): 43-79; Dubois, *From Ballot to Bench*.

the notion that states using the Missouri Plan have better judges than those that do not.[12] Their work set out to debunk what they called the nine myths of judicial selection reform, including the widely held, but empirically suspect notions that appointive systems remove politics from judicial selection, that citizens are unable to adequately assess judicial qualifications when voting, and that money buys judicial elections.

> *In sharp contradiction to the claims of election critics, we have demonstrated conclusively that partisan elections to the American bench are a far cry from the institutional failures that they are purported to be among court reform advocates, legal scholars and the media. Instead of lacking the capacity to fulfill their very basic function of accountability, judicial elections are highly efficacious institutions of democracy that in many ways serve as the prototype for what state elections should be in the United States.*[13]

More recently in 2012, a study examining public perceptions of the citizenry toward judicial elections found that over the course of time, judicial elections not only do not erode public confidence in the court system, but in fact support it.

> *When people know that they have the power to turn out judges who perform poorly, they are more willing to accept the decisions of those judges. From this perspective, judicial elections slowly build the legitimacy of courts, rather than eroding that legitimacy.*[14]

So, history tells us that judicial elections are an integral part of the landscape in Ohio, the people have made it clear they want to keep judicial elections in this state, and there is a growing body of evidence that judicial elections can play a vital role in reinforcing democratic accountability and thus supporting public confidence in the judicial branch.

We Can Do Better

But is there still room for improvement in our elected system in Ohio? Can we do more to ensure our system is achieving the optimum result of balancing electoral accountability and judicial independence? Make no mistake, we enjoy one of the best systems of justice anywhere in the world. Extraordinarily talented and hard-working people make up the Ohio judiciary, and the work they do every day is remarkable. But there are three reasons why I believe we can do even better: 1) There are problems with the public's perceptions of judges and the judicial

[12] Bonneau, *In Defense of Judicial Elections*, 135-137.
[13] Ibid., 139.
[14] James L. Gibson, *Electing Judges: The Surprising Effects of Campaigning on Judicial Legitimacy* (Chicago: University of Chicago Press, 2012), 131.

branch. 2) Voter participation in judicial elections is less than it should be. 3) There is evidence that more can be done to educate and inform the electorate.

In the last 10 years, there were two major statewide conferences organized to bring people together from across the political spectrum – leaders of the bench and the bar, business leaders, union representatives, and concerned citizens – to examine this issue of judicial selection. Both of these efforts were capably led by my colleague and dear friend, the late Chief Justice Thomas J. Moyer. In 2003, Chief Justice Moyer held a conference titled "Judicial Impartiality: The Next Steps," which included leaders of both political parties, various judicial associations, the Ohio State Bar Association, and many others. I was there for the two-day conference and found the discussions to be fascinating. There was a report issued, but very little long-term action was taken. Some of the proposals I detail below are drawn from that report. In 2009, Chief Justice Moyer again called together many of the same groups for a conference titled, "The Forum on Judicial Selection." Again, I participated in the discussion, and again many thoughtful people brought forward interesting ideas about how to improve our system. That time, the outcome was a proposal from some of the groups involved that Ohio should make another attempt at enacting a plan similar to the Missouri Plan, what Chief Justice Moyer called an "appointive-elective" proposal. (He eschewed the term "merit selection" because he thought it implied that elective systems somehow resulted in selecting judges without merit.) This proposal, too, did not advance.

There are lessons to be drawn from these two previous judicial selection efforts of the last decade. We can draw from the research done at that time, which I include in my proposal here. And we can clearly see from these previous efforts that the issue of judicial selection is not settled in Ohio. While these many diverse people around the table in 2003 and 2009 found much to disagree about, there was one area in which they had nearly universal agreement as was evidenced by the simple fact that they all participated in the forum: They agreed that we can do more to improve judicial selection in Ohio.

Why do so many concerned people continue to revisit the issue of judicial selection? First, it is because polls continually show there are problems with the public's perceptions of the judicial branch. It has long been recognized that the fundamental nature of the judicial branch is such that the democratic legitimacy of the courts is derived in large measure from the public's trust and confidence in them. Alexander Hamilton wrote in the Federalist Papers that the courts "have neither Force nor Will, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments."[15] Former U.S. Supreme Court Justice Sandra Day O'Connor calls this the "Power of the Quill." She once said, "The Judicial power lies

[15] Alexander Hamilton, *The Federalist: Number 78* (New York: Robert B. Luce Inc, 1976), 504.

in the force of reason and the willingness of others to listen to those reasons."[16] So how the general public views judges and the courts is particularly important, because it has a direct bearing on the courts' democratic legitimacy.

Unfortunately, polls also show we have work to do in this area. Public trust and confidence in the institution of the judicial branch remains far from certain. The Pew Research Center for People and the Press produced a study in May 2012 that concluded the public's positive perception of the U.S. Supreme Court was at its lowest mark in 25 years, with Democrats and Republicans essentially both holding similar views.[17] Fifty-two percent of adults had a favorable opinion of the Supreme Court, down from 58 percent in 2010. The previous low was 57 percent in 2005 and 2007.[18] This result was corroborated later last year in a poll by the New York Times and CBS News.[19] Only 44 percent of Americans polled said they approved of the job of the court, with about 75 percent saying they believe decisions are influenced by politics. These polls should serve as cause for alarm for anyone concerned about supporting a strong judiciary. There have not been recent studies on public perceptions of the judiciary in Ohio, but past studies done in connection with judicial-selection reform found segments of the public continue to harbor negative perceptions about the courts. [20] If left unchecked, this could be corrosive to our democratic system. Particularly problematic is the notion that courts are not independent, and there are many polls indicating that this is a misperception that persists. To cite one example, a 2009 poll by the National Center for State Courts found that 59 percent of Americans believe courts' decisions are influenced by politics.[21] Judicial elections are the main mechanism for supporting positive perceptions of the courts by demonstrating accountability to the public. By strengthening judicial elections, we will support public trust and confidence in the judicial branch.

The second reason we need to strengthen judicial elections in Ohio is simply because voter participation in them is inadequate. This is discussed in greater detail later in this paper in the section on ballot order. For now, it's worth noting the simple fact that voters on average cast significantly fewer votes in judicial contests than in contests for offices in the executive and legislative branches.

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[16] Sandra Day O'Connor, "The Essentials and Expendables of the Missouri Plan," *Missouri Law Review* 74, (2009): 489.

[17] Pew Research Center for the People and the Press, *Supreme Court Favorability Reaches New Low* (Washington DC: Pew Research Center, 2012), 1.

[18] Ibid., 1.

[19] Adam Liptak and Allison Kopicki, "Approval Rating for Justices Hits Just 44% in New Poll," *New York Times*, (June 8, 2012, New York edition): A1.

[20] Opinion Strategies *Ohio Statewide Survey* (Washington DC: League of Women Voters, October 2002).

[21] Princeton Survey Research Associates International, *Separate Branches, Shared Responsibilities: A National Survey of the Public Expectations on Solving Justice Issues* (Williamsburg: National Center for State Courts, 2009), 20.

Lastly, there's more we can do to empower Ohio voters with information about their courts and their judges. This will be discussed in greater detail in Point Three of the following proposal examining voter education and information. For now, I offer just one example: A national study once found that less than 15 percent of voters leaving the booth could name even one of the judicial candidates on the ballot they just cast.[22] We can do better.

A Proposal for Improvement

So, for all of the preceding reasons detailed here, I propose we examine how we can strengthen judicial elections in Ohio. The proposal is simple: We don't need to start from scratch. What we need is a framework of ideas and to bring people together to reach consensus. People have examined judicial selection nationally and in Ohio for decades. What I have done is draw on this research to propose eight ideas, and I have created a mechanism for the public to come together to discuss these ideas and arrive at a final plan. The ideas are stated as questions because I do not profess to have all the answers. I am just hoping to lead the discussion. Ohioans who are interested in improving our democratic system of justice are urged to visit www.OhioCourts2013.org. The website has a resource section with material from the past judicial selection forums, a bibliography of other resources on judicial selection (some of which are available in full text online and others of which are available in the Ohio Supreme Court's Law Library), and, most importantly, a section where the public can share their thoughts and ideas on the plan. I announced the plan in May 2013, and my goal is to have a final plan we all can support by the end of the year. What follows are the eight points of the plan and a detailed discussion of each.

Ohio Courts 2013: A Plan for Strengthening Judicial Elections:

1. Should Ohio Change the Law So Judicial Races Are No Longer Listed at the End of the Ballot?
2. Should All Judicial Elections be Held in Odd-Numbered Years?
3. Should Ohio Centralize & Expand Its Civic Education Programming and Institute a Judicial Voter Guide?
4. Should Ohio Eliminate Party Affiliation on the Ballot in Judicial Primaries?
5. Should Ohio Join the Other States that Have a Formal, Non-Partisan System for Recommending Nominees to the Governor to Fill Judicial Vacancies?

[22] Charles A. Johnson, Roger C. Schaefer, and R. Neal McKnight, "The Salience of Judicial Candidates and Elections," *Social Science Quarterly* 59, no. 2 (1978), 371.

6. Should Appointments to the Ohio Supreme Court Require the Advice and Consent of the Ohio Senate?
7. Should Ohio Increase the Basic Qualifications for Serving as a Judge?
8. Should Ohio Increase the Length of Judges' Terms?

1. Should Ohio Change the Law So Judicial Races Are No Longer Listed at the End of the Ballot?

Ohio election law places judicial contests at the bottom of the ballot. Multiple studies demonstrate that ballot order matters. Candidates listed first get more votes. Contests and issues listed first get more participation. In recognition of this well-documented phenomenon, Ohio law already mandates that candidates' names be randomized. Should a similar approach be applied to the order of contests? Because judicial contests come at the end of the ballot, one quarter of voters consistently come to the polls and then do not participate in these contests. Would changing the ballot order increase voter participation in selecting the men and women who serve in our judicial branch?

Research over the last two decades demonstrates that ballot order affects election results. Due to their non-partisan nature, and the current statutory framework, judicial races routinely fall near the end of all Ohio ballots. Simple statutory changes could be made to rectify this long-standing practice in Ohio elections. Is it time to give elections for judges the same priority as elections in other branches of government?

Ohio's ballot order for candidates and issues is prescribed by R.C. 3505.03-04. The statutes require the listing of partisan and non-partisan contests in the traditional order that most voters are accustomed: federal contests are listed first, followed by statewide, county, and local contests. Partisan and non-partisan contests are clearly segregated by law on the ballot, with partisan races listed first. Other than a legislative decision that national and statewide partisan contests should have top-ballot placement, no other reasoning is cited for the placement of judicial contests at or near the bottom of most ballots. Other than the perceived importance of partisan contests, why are Ohio's partisan statewide and, by definition, non-judicial contests always on the top of the ballot? What if the ballot order were purely random among all contests? And if the ballot order were purely random – mixed among partisan and nonpartisan, federal, state, local and judicial contests – would voter participation increase in judicial contests that traditionally experience undervoting in Ohio?

Several studies conducted since the late 1970s reveal that the ballot placement of candidates plays a significant role in how each vote is cast. For example, an analysis of Ohio election returns in 1992 revealed that name order effects appeared in 48 percent of contests, advantaging candidates listed first by an average of 2.5 percent.[23] Some studies have even noted as much as a 5 percent effect on candidate names that are placed before other candidates in the same contest.[24] Other researchers theorize that the reason people choose the first name on the ballot is due to "primacy effects," the natural human response to choose the first answer when given multiple choices.[25] In another study, researchers found there exists an inherent bias, based on human psychology, in the choices people make. Options listed first will be chosen more often than those that are not.[26]

It is well known that voters are less likely to cast a vote on contests later in the ballot, a phenomenon known as "roll-off."[27] While this effect might be due to "voter fatigue," it also might be due to the fact that the relative importance of a contest generally decreases with ballot position.[28] If candidate order is affected by this phenomenon, what about the order of the contests and issues on the ballot? Could the theories concerning the role of human psychology in candidate selection also be applied to the larger question of the ballot placement of certain contests at the bottom of the ballot?

The Brennan Center for Justice at the New York University School of Law generally found that the farther down on a ballot a contest is placed, the less likely voters are to vote on it.[29] In fact, the Brennan Center sought to dissuade the State of Mississippi from placing a U.S. Senate contest at the very bottom of the ballot in 2008. In a letter to the governor and attorney general of the State of Mississippi, the Brennan Center noted that in the 2002 Mississippi elections 3 percent of all voters failed to record votes in Congressional contests at the bottom of the ballot. In addition, 21 percent of voters in the same voting year failed to record votes on a statewide constitutional amendment located at the bottom of most ballots.

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[23] Joanne M. Miller and Jon A. Krosnic, "The Impact of Candidate Name Order on Election Outcomes," *Public Opinion Quarterly* 62, no.3 (1998): 291.

[24] March Meredith and Yuval Slanat, "On the Causes and Consequences of Ballot Order-Effects," *Political Behavior* 35, no.1 (2013): 183-184.

[25] Miller, "The Impact of Candidate Name," 293-294.

[26] Jon A. Krosnik, Joanne M. Miller and Michael P. Tichy, "An Unrecognized Need for Ballot Reform," in *Rethinking the Vote: The Politics and Prospects of American Election Reform*, ed. Ann N. Crigler, Marion R. Just and Edward J. McCaffery (New York: Oxford University Press, 2004), 52-52, 63.

[27] Walter D. Burnham, "The Changing Shape of the American Political Universe," *The American Political Science Review* 59, (1965): 9.

[28] Shaun Bowler, Todd Donovan and Trudi Happ, "Ballot Propositions and Information Costs: Direct Democracy and the Fatigued Voter," *The Western Political Quarterly*, 45 (1992): 560.

[29] Lawrence Norden, "Letter to Governor Haley Barbour," *Brennan Center for Justice* (September 11, 2008), 2. http://www.brennancenter.org/sites/default/files/legacy/Democracy/09.11.08.MS.Letter.pdf

The failure to vote in a particular contest is commonly referred to as undervoting. Compared to over voting when a voter mistakenly votes for more candidates than allowed, undervoting or abstaining from voting is an intentional act by the voter that is not tied to mistakes or error.[30] In addition, undervoting is higher in areas with African-American voters and in areas outside of major media markets. Voter fatigue and "choice overload" also play a factor in undervoting.

A review of Ohio statewide judicial contests between 2002 and 2012 reveals a very clear percentage of undervoting by the electorate in these contests.

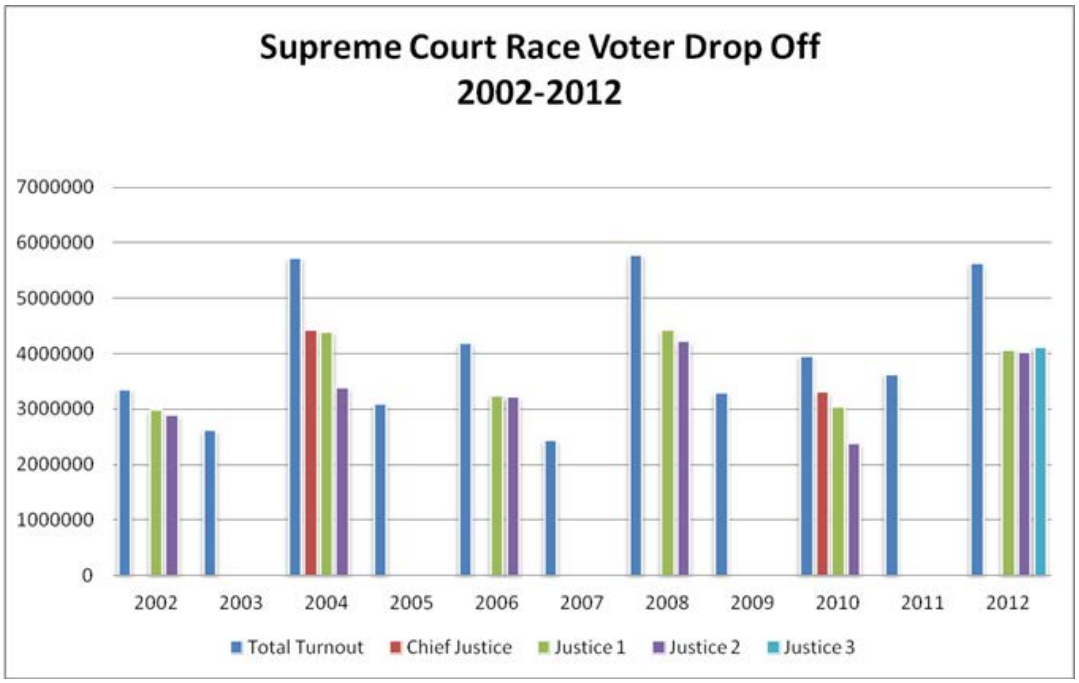

Fig. 1

The undervoting or voter roll-off in statewide judicial contests (The Supreme Court of Ohio) was as high as 24 percent in some years.[31] (Fig. 1). As previously discussed, it is not uncommon for judicial contests to be at or near the bottom of most ballots in even- or odd-numbered election years. Ballot position likely is a key factor in the undervoting experienced in Ohio judicial contests.

The current statutory framework in Ohio could be amended to require the random placement of state, county, and local contests on ballots. Random placement would even the playing field for judicial contests. If judicial contests receive equal treatment in ballot position, then it is very

[30] David C. Kimball and Martha Kropf, "Ballot Design and Unrecorded Votes on Paper-Based Ballots," *Public Opinion Quarterly* 69, no. 4 (2005): 524-525.
[31] Based on original research by Ohio Supreme Court staff examining data from local boards of elections and the Ohio Secretary of State from 2002 to 2012.

likely that both voter awareness and participation of judicial contests will increase over the long run. This conclusion is supported by recent research finding that voters are more likely to abstain as the ballot position of a particular contest falls.[32]

There appears to be little, if any, reason that non-judicial statewide elected contests have priority ballot placement over statewide judicial contests. This arbitrary ballot placement presupposes an existing higher importance to offices in the executive and legislative branches. Ballot placement creates the perception in the voter that judicial contests are of lower importance, and, consequently, affects how informed they become about judicial contests before they enter the ballot booth.

An amendment to Ohio Revised Code 3505.03-04 to require the randomization of the ballot placement of all contests would place no additional burden upon the Secretary of State when prescribing the ballot order for each county. The amendment would be similar in nature to the requirement that candidates' names rotate by precinct and could easily be implemented.

Researchers recently proposed that the randomization of ballot order of candidate contests can have a positive effect on voter-ballot response. They theorize that elections officials could consider randomizing the order contests appear on the ballot, in order to remove the effects ballot position plays in undervoting.[33] They conclude that randomization would partially mitigate the effects. The body of previous work on the effects of candidate position within a contest confirms that order does matter.[34]

By adopting legislation to mandate a truly random ballot for all contests, regardless of the branch of government, Ohio could once again be at the forefront of judicial-selection reform.

2. Should all Judicial Elections be Held in Odd-Numbered Years?

As an alternative or in addition to Point 1's proposal of randomizing ballot order, consideration also should be given to moving all judicial elections to odd-numbered years. Article XVII, Section 1 of the Ohio Constitution provides:

> Elections for state and county officers shall be held… in even numbered years; and all elections for all other elective officers shall be held… in the odd numbered years.

Under this schedule, Supreme Court justices and court of appeals judges, as state officers, and court of common pleas judges and county court judges, as county officers, are elected in even-

[32] Ned Augenblick and Scott Nicholson, *Ballot Position, Choice Fatigue, and Voter Behavior* (Berkeley : University of California, Last modified December 18, 2012), 23. http://faculty.haas.berkeley.edu/ned/Choice_Fatigue.pdf
[33] Ibid., 22.
[34] Miller, "The Impact of Candidate Name," 300-308.

numbered years.[35] As a result, state and county judicial races appear on the same ballot as federal and state executive and legislative races, as well as ballot issues such as initiatives, referendums, etc. This large number of races and issues appearing on the ballot during an even-numbered election creates several difficulties.

First, given the number of races and issues to be decided, the ballot can be lengthy. As noted earlier, due to the phenomenon of "roll-off," voters are less likely to cast a vote as they move down the ballot.[36] Additionally, the lower a contest appears on the ballot, the more it increases the tendency to vote for the first option listed or for the status-quo.[37] It is logical to conclude that the longer ballots for even-numbered elections increase these problems.

Second, because of the number of races and issues appearing on the ballot during an even-numbered year election, voters are arguably less informed about judicial candidates. During even-numbered year elections, media coverage and advertising efforts are focused primarily on the federal and state executive and legislative races. As a result, it is difficult to reach and educate voters about judicial candidates and races. And, as one study shows, less informed voters are more likely to abstain from voting.[38]

These issues could be addressed by Ohio following the example of Wisconsin and Pennsylvania, both of which conduct judicial elections separate from executive and legislative elections.[39] Specifically, the Ohio Constitution could be amended to provide all judicial elections to be in odd-numbered years. This would allow judicial races to appear on a less-crowded ballot as these elections include only municipal, township, and school board races and ballot issues. In turn, this should not only reduce voter roll-off and the tendency to vote for the first option or status-quo, but also increase opportunities for voter outreach and education on the judicial candidates and races.

3. Should Ohio Centralize & Expand Its Civic Education Programming and Institute a Judicial Voter Guide?

Let's say for the sake of discussion that Points 1 or 2 of this proposal were enacted, judicial contests no longer are relegated to the bottom of the ballot and/or judicial elections are held in odd-numbered years, and roll-off is reduced, meaning more people are participating in judicial

[35] In contrast, municipal court judges, as neither state nor county elected officials, are elected in odd-numbered years.
[36] Augenblick, *Ballot Position, Choice Fatigue*, 2.
[37] Ibid.,4,8.
[38] Martin P. Wattenberf, Ian McAllister and Anthony Salvanto, "How Voting Is Like Taking an SAT Test: An Analysis of American Voter Rolloff," *American Politics Research*, 29 (2000): 234, 242.
[39] In Wisconsin, executive and legislative elections are conducted in November while judicial races are held in April of the same year. In contrast, Pennsylvania conducts executive and legislative elections in even-numbered years while judicial elections are held in odd-numbered years.

elections. Would this participation automatically be meaningful? Would voters in these contests automatically be well-informed on the candidates and the jobs they seek? On one hand, we might expect that many voters, now more aware of judicial races because they are more prominently featured also would pay more attention to the candidates and the offices and might do more homework in preparation before heading to the polls. We also might expect the news media might start paying more attention and devote more coverage to these contests that now are receiving more voter attention. However, it is difficult to conceive this would suffice because there is a bit of a chicken-or-the-egg question here. As one researcher put it, "… [O]ne of the most fundamental reasons voters choose not to participate in elections is the lack of information about the candidates."[40] Is there action we can take in Ohio to address the well-documented issues surrounding the public's lack of knowledge of the courts, judges and judicial elections?

Studies routinely show citizens' knowledge of the judicial system is inadequate, and voter participation and engagement in judicial elections is less than in elections for the other two branches. A 2010 poll by FindLaw.com found only one in three Americans could name any U.S. Supreme Court justice, and only 1 percent of those polled could name all nine justices.[41] The American Bar Association did a poll in 2005 that found 44 percent of Americans could not correctly identify the role of the judiciary, and only 55 percent, given a choice of options, correctly identified the three branches of government. The ABA poll found that 22 percent of respondents said the branches were Republican, Democrat, and Independent.[42] A 2009 poll by the National Center for State Courts found that only 21 percent of respondents could name all three branches of government; 44 percent could not name any branches of government.[43]

A study examining judicial elections in Oregon and Washington found the vast majority of voters in those states reported they felt they had inadequate information available with which to make their decisions on judicial contests.[44] In 2003, a poll by the League of Women Voters found less than 4 percent of Ohioans could name even one justice on the Ohio Supreme Court.[45]

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[40] Bonneau, *In Defense of Judicial Elections*, 30.
[41] *PR Newswire*, "Two-Thirds of Americans Can't Name Any U.S. Supreme Court Justices, Says New FindLaw.com Survey," (June 1, 2010). http://www.prnewswire.com/news-releases-test/two-thirds-of-americans-cant-name-any-us-supreme-court-justices-says-new-findlawcom-survey-95298909.html
[42] Harris Interactive, *Civics Education* (Chicago: American Bar Association, 2005. Last accessed April 29, 2013), 7. http://www.justiceteaching.org/resource_material/ABASurvey.pdf
[43] Princeton Survey Research Associates, *Separate Branches, Shared Responsibilities*, 14-15.
[44] Nicholas Lovrich, Jr. and Charles H. Sheldon, "Voters in Contested, Non-partisan Judicial Elections: A Responsible Electorate or a Problematic Public?" *Western Political Quarterly* 36, no. 2, (1983), 247.
[45] *Cleveland Plain Dealer*, "Cash v. Quality: Ohio's Judicial Elections Smell More of Money than

What can be done to address this? There are a number of possibilities.

The Next Steps conference report recommended bolstering voter education, and for a brief time, the Ohio Secretary of State's Office experimented with a statewide judicial voter guide, but this effort was abandoned. The League of Women Voters of Ohio prepares a voter's guide featuring Ohio Supreme Court candidates, with biographical information and their answers to three questions. But this is limited to the Supreme Court and does not include information about the hundreds of other judicial races in Ohio. Many other states have experimented to varying degrees with some type of central, public repository for information about judicial candidates, according to the American Judicature Society.[46] For example, the California secretary of state prepares a voter information guide for the general election featuring information about the educational and career backgrounds of appeals court judges standing for retention. The guide also includes basic information about the judicial selection process. It is made available on the Internet and also is mailed to the homes of all registered voters.[47] Candidates for lower court seats in California may be included in the guide, however they must incur some expense, thus limiting participation.[48] At minimal expense, Ohio could follow the recommendation of the 2003 report on judicial selection and support a statewide judicial voter guide. The Ohio Supreme Court could use existing resources to prepare the guide and distribute it on the Web, or perhaps an independent commission could be established to prepare and distribute the guide. In order to be most effective, it seems a judicial voter guide should include information about judicial contests at every level, not just the higher profile races like the Ohio Supreme Court. Research shows that in those states where organized voter information materials are provided in judicial elections, voters report that they find the material useful and have a higher level of confidence in their decisions at the polls.[49]

Beyond a simple voter guide, there are other areas where we could potentially empower voters by providing them with the tools they need to make informed decisions at the polls.

What about televised debates for judicial office? In the past, various groups have sponsored televised judicial candidate debates for the Ohio Supreme Court, but these have not been held in at least two election cycles. There is very little research that has been done in this area, but anecdotally, we know that the more information voters have the greater their meaningful participation in elections. Various local bar associations and other groups conduct debates in judicial contests on a very limited basis. Could more be done to support and expand this

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Merit, and the Rules Must Change to Give Voters Meaningful Choices," (March 5, 2003): B8.
[46] American Judicature Society, *Judicial Campaigns and Elections: Voters Guide* (Last accessed April 26, 2013). http://www.judicialselection.us/judicial_selection/campaigns_and_elections/voter_guides.cfm
[47] Ibid.
[48] Ibid.
[49] Dubois, *From Ballot to Bench*, 69.

practice? Could technology be used to inexpensively make these debates available on the Internet? These are ideas worth exploring.

Meanwhile, while there are multiple successful programs for general civic education in the law, it has been suggested that these efforts would benefit from combining their resources and working in concert with one another. The Ohio Supreme Court's award-winning civic education program operates side-by-side with the Ohio Center for Law-Related Education, programs at the Ohio State Bar Association, local bar associations, and other groups. If we could find a way to better coordinate these activities, we might succeed in improving judicial elections from a number of fronts. The next generation of voters might have a more firmly ingrained understanding of their obligation to participate in judicial elections. They might understand this obligation to participate means not just going to the polls and voting in judicial contests but starts with doing the homework to be informed. Citizens also might have a better general understanding of what judges do, further informing their decisions at the polls.

Finally, is it possible that judicial elections would benefit from an elevation of the overall level of general transparency in the judicial system? Ohio for years has been a national leader on transparent courts and cameras in the courtroom. The state Supreme Court has successfully utilized cameras in its courtroom for more than 10 years, and there is evidence to support the idea that the more transparent the courts are, the more citizens will understand the system.[50] Should the use of cameras in the courtroom in Ohio be expanded?

4. Should Ohio Eliminate Party Affiliation on the Ballot in Judicial Primaries?

Twenty-two states elect their judges in competitive elections. Seven of these hold overtly partisan elections with the candidate's party affiliation appearing on the ballot in both the primary and the general elections. Fourteen of these states have explicitly non-partisan elections with party affiliation not ever appearing on the ballot. Ohio is the only state in the country that holds overtly partisan primaries with ostensibly nonpartisan general elections with the party affiliation not appearing on the ballot. Should party affiliation have any bearing on races for an office that requires absolute impartiality? Is it time for Ohio to join the other states that have abandoned party affiliation in judicial elections altogether?

Beginning in the late 19th century and continuing to this day, reformers of judicial selection realized the harmful effects of partisan elections/benefits of nonpartisan elections. First, nonpartisan elections help protect judges from partisan political influences that could compromise the independence of their judgments or create the appearance of such a

[50] James L. Gibson and Gregory A. Caldeira, "Knowing about Courts," *2nd Annual Conference on Empirical Legal Studies Paper* (Last modified June 20, 2007). http://ssrn.com/abstract=956562

compromise. Parties can exercise great power over judges elected in partisan elections by wielding control over the nomination process and influence over general elections.[51]

The ABA's 2003 Commission on the 21st century Judiciary provides an excellent summary of this concern (emphasis added):[52]

> [P]artisan elections make party affiliation the single most salient feature of a judge's candidacy by including it as the only information about the candidates on the ballot itself…. The net effect is to further blur, if not obliterate, the distinction between judges and other elected officials in the public's mind by *conveying the impression that the decision making of judges, like that of legislators and governors, is driven by allegiance to party, rather than to law.*

Nonpartisan elections seek to avoid these harmful effects by refocusing voter attention away from partisan affiliation and onto the qualification and legal ability of the candidates.

Furthermore, nonpartisan judicial elections increase stability in state judiciaries, which in turn helps preserve the rule of law, by avoiding public perception that the courts simply follow election returns – i.e., that when political winds shift or strong candidates run at the top of the ticket, the judiciary can change overnight. In partisan elections, incumbent judges are more than twice as likely to be defeated than they are in nonpartisan elections.[53] Nonpartisan judicial elections can help dampen these effects.[54]

Finally, nonpartisan elections help protect judicial impartiality and separation of powers. Specifically, nonpartisan elections are less likely than partisan elections to be distorted by partisan policy goals (i.e., invoking hot-button judicial issues to turn out the vote).[55]

It should be noted that there are some scholars who argue that party affiliation is a valuable cue for voters, particularly in low-information races like judicial races.[56]

From 1851 until 1911, judges in Ohio were elected via a partisan process. In 1911 with the adoption of the Nonpartisan Judiciary Act, Ohio partially addressed the harmful effects of partisan elections by implementing nonpartisan *general* elections. However, in 2013, Ohio is the only state to nominate judicial candidates in partisan primary elections, which undermines

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[51] Kathleen Sullivan,"Republican Party of Minnesota v. White: What are the Alternatives?," *Georgetown Journal of Legal Ethics* 21, (2008): 1336.
[52] American Bar Association Commission on the 21st Century Judiciary, *Justice in Jeopardy* (Chicago: American Bar Association, 2003), 76-77.
[53] Anthony Champagne, "Tort Reform and Judicial Selection," *Loyola of Los Angles Law Review* 38, (2005): 1493.
[54] Sullivan, "Republican Party of Minnesota", 1336-1337.
[55] Ibid., 1337.
[56] Suddes, *Knowledge Gaps in Metropolitan Ohio*; Dubois, *From Ballot to Bench*; Matthew Streb, *Rethinking American Electoral Democracy* (New York: Routledge, 2008).

the very benefits of nonpartisan general elections. Is it time for Ohio to join the other states that have abandoned party affiliation in judicial elections altogether?

5. Should Ohio Join the Other States that Have a Formal, Non-Partisan System for Recommending Nominees to the Governor to Fill Judicial Vacancies?

More than half of all judges in Ohio get a seat on the bench not through an election, but instead through a gubernatorial appointment to fill a vacancy. Thirty-six states have some type of formal system to bring together citizens from diverse backgrounds to carefully consider candidates for judicial office. Ohio has experimented with some form of a nominating commission with varying degrees of success in the past. Cuyahoga County has had a very successful local program fulfilling this function. The American Bar Association has advocated this approach. Should Ohio adopt in law judicial nominating commissions for gubernatorial appointments?

Nominating commissions exist in 36 states. These 36 states have a form of merit selection for at least some of their judicial offices.[57] Fifteen states that have merit selection do not utilize a nominating commission. The American Bar Association has advocated for states to utilize a nominating commission, an eligibility commission, or a retention evaluation body or a combination of the three.[58] If the goal is to create a panel to review the qualifications of individuals who stand to be appointed or elected to a judgeship, a judicial nomination commission would achieve that goal.

A nominating commission traditionally is used in making recommendations to an appointing authority. In Ohio, the governor can appoint any statutorily qualified individual to a vacancy. H.B. 173, introduced in June 2007 in the 127th Ohio General Assembly, contained provisions to create a Judicial Appointment Review Commission; however, S.B. 149 and H.B. 266 did not. The provisions of H.B. 173 were intended to codify a body in use by then-Governor Ted Strickland. Governor Strickland created a body by Executive Order to review applicants for vacant judgeships and make recommendations to him for appointments. H.B. 173 would have statutorily created this process for the future. Nominating commissions have faced harsh criticism as being “back room” deal makers and “secret legal cabals”.[59] The same arguments were voiced during deliberations and consideration of H.B. 173. Infringing upon the governor’s authority with a nominating commission may be unpopular with the executive branch. One

[57] Rachel Paine Caufield, *Inside Merit Selection: A National Survey of Judicial Nominating Commissioners* (Des Moines: American Judicature Society, 2012), 2, 63-66.
[58] American Bar Association Standing Committee on Judicial Independence, *Standards on State Judicial Selection: Report of the Commission on State Judicial Selection Standards* (Chicago: American Bar Association, 2000), 1-3.
[59] Caufield, *Inside Merit Selection*, 5.

option would be to allow the governor to reject the commission's recommendations and ask for further recommendations.

The Cleveland Metropolitan Bar Association, in conjunction with both political parties in Cuyahoga County, has instituted a commission much like a nomination commission in recommending individuals to the governor to fill judicial vacancies in that county. Both former-Governor Strickland and Governor John Kasich have utilized recommendations from the Judicial Qualification Committee in making appointments to the bench in Cuyahoga County. Should this idea be replicated as part of an overall judicial selection plan, consideration would need to be given to the make-up of an eligibility or qualification commission and, in addition, whether such a commission would operate statewide or only in larger jurisdictions where the pool of candidates would be greater.

6. Should Appointments to the Ohio Supreme Court Require the Advice and Consent of the Ohio Senate?

In the federal system and in a handful of states, the system of checks and balances among the three branches of government includes a requirement that judicial appointments by the chief executive (the president or the governor) be confirmed by the Senate. In fact, in Ohio from 1803 until 1851, the legislature was the sole body that appointed judges. Given the volume of appointments made each year, it might be impractical to have this requirement for all judicial appointments. But what about for the highest court in the state, the body that also exercises superintendence authority over the entire court system? Should the Ohio Senate have the authority to approve appointments to the Ohio Supreme Court?

Five states and one United States territory utilize a gubernatorial appointment process with confirmation by the legislature in selecting appellate court judges and for the appointment of appellate court judges to fill vacancies.[60] Some of these states utilize legislative consent in conjunction with a nominating commission while others do not. Pennsylvania also uses this process for the appointment of judges to unexpired terms on the appellate courts. A handful of states use advice and consent, most with the input of a nominating commission, for the selection of trial court judges. Most notably, of course, the federal system utilizes senatorial advice and consent on the selection of appointees to the federal bench.

[60] S. Strickland, R. Schauffler, R. LaFountain & K. Holt, eds, "State Court Organization: Table 21 Judicial Selection," *National Center for State Courts* (Last updated March 6, 2013). http://www.ncsc.org/microsites/sco/home#

From an historical perspective, the majority of early American states relied solely upon the legislatures to choose judges.[61] The movement to dual-branch appointment of the judiciary began with the U.S. Constitution and resulted from a number of considerations, including the desire for checks and balances under the new republican system of government.[62] Utilization of advice and consent of the legislative branch to fill vacancies generally gets the support of the legislature; however, it can be fraught with political considerations.

As evidenced by appointments to the federal bench in recent years, appointments made by an executive with the advice and consent of the legislature can be time consuming and can result in a public spectacle of dysfunction between the branches. According to the Congressional Research Service, a non-controversial appointment to the federal bench takes at least 200 days for approval.[63] In addition, without the use of an eligibility or nominating commission in the process, legislative advice and consent to judicial appointees does no more to guarantee a qualified bench than a sole executive appointment process. This system of advice and consent may be considered in Ohio, but should likely be limited to vacancies on the Ohio Supreme Court to avoid the potential backlog of vacancy nominations at the trial and intermediate appellate courts. Such a backlog would increase costs to the judicial branch due to the need to assign visiting judges to cover until the nominee is confirmed and would increase administrative inefficiencies in the judicial system.

7. Should Ohio Increase the Basic Qualifications for Serving as a Judge?

In the 2003 Next Steps conference report on judicial selection, one recommendation of the forum attendees was to increase the number of years of practice necessary to run for or be appointed to a judgeship. Currently, an attorney need only have engaged in the practice of law in Ohio for six years prior to assuming the bench. Across the United States there are varying requirements for legal credentials prior to becoming a judge. In some states, trial court judges require no specific number of years in practice, but the majority of states require at least five years of practice and up to 10 years.

For appellate courts, some states still do not require a specific number of years in practice, but many require at least eight years and some at least 10 years in the active practice of law. Three legislative proposals to enact portions of the Next Steps recommendations would have implemented longer years-of-practice requirements. The bills would have maintained the six-

[61] Mary Clark, "Advice and Consent vs. Silence and Dissent? The Contrasting Roles of the Legislature in U.S. and U.K. Judicial Appointments," *Louisiana Law Review* 71, (2011): 454.
[62] Ibid., 459.
[63] Doug Kendell, "The 200-day Club," *Slate.com* (September 27, 2012). http://www.slate.com/articles/news_and_politics/jurisprudence/2012/09/judicial_confirmation_process_it_takes_more_than_200_days_to_join_the_federal_bench_.html

year requirement for municipal and county court judges and raised the requirement for common pleas judges (10 years required), court of appeals judges (12 years required), and supreme court justices (15 years required). Should Ohio increase the number of years required to serve on the bench?

8. Should Ohio Increase the Length of Judges' Terms?

Another suggested reform of The Next Steps forum was an increase in the length of judicial terms in Ohio. The Judicial Qualifications and Term Lengths Work Group stated that increased term lengths would promote "judicial independence while ensuring continued accountability to the public." Currently in Ohio, all judges are elected to six-year terms. The forum participants noted that the terms of county and municipal judges must remain six years without an amendment to the Ohio Constitution.

Under the forum participant's recommendations, county and part-time municipal court judges would serve eight years, full-time municipal court judges and common pleas judges would serve 10 years, and intermediate appellate court judges and Supreme Court justices would serve 12-year terms. Would lengthening judges' terms be an improvement that would still hold judges directly accountable to the voters, but allow them to spend more time concentrating on their jobs?

Conclusion: Leading the Way

Ohio has a long tradition of leading the way when it comes to reforms in the judicial system. We were among the very first states to adopt judicial elections. We were among the first to do away with partisan general elections, and still are the only state to at the same time retain partisan judicial primaries. We were the first state to consider – and reject – the Missouri Plan of appointments followed by retention elections. Forty-five years ago, Ohio was once again on the leading edge when the organized bar, the judges' associations, legislators and the governor all came together behind the 1968 Modern Courts Amendment. On May 7, 1968, the voters of Ohio passed the Modern Courts Amendment by an overwhelming margin, 62 percent to 37 percent, with the ballot initiative passing in 87 of Ohio's 88 counties.[64] It was the first major revision of Article IV of the Ohio Constitution governing the judicial branch since the Constitution of 1851.[65] The amendment made a number of changes to the structure of the Ohio judicial system, most notably establishing the Ohio Supreme Court's authority of superintendence over the state judicial system. As a political compromise that probably saved the whole package, the General Assembly wisely removed a provision of the amendment

[64] Milligan, "The 1968 Modern Courts Amendment," 819.
[65] Ibid., 811.

before sending it to Ohio voters that would have abolished judicial elections in Ohio. But that did not end the debate over judicial elections, and we have debated the topic ever since. I believe now is the time to revisit this topic once and for all, not to do away with judicial elections, which voters made clear they want, but to strengthen them. I hope you will join me in having this conversation.

Bibliography

American Bar Association Commission on the 21st Century Judiciary. *Justice in Jeopardy*. Chicago: American Bar Association, 2003.

American Bar Association Standing Committee on Judicial Independence. *Standards on State Judicial Selection: Report of the Commission on State Judicial Selection Standards*. Chicago: American Bar Association, 2000.

American Judicature Society. *Judicial Campaigns and Elections: Voters Guide*. Last accessed April 26, 2013. http://www.judicialselection.us/judicial_selection/campaigns_and_elections/voter_guides.cfm

Augenblick, Ned and Scott Nicholson. *Ballot Position, Choice Fatigue, and Voter Behavior*. Berkeley : University of California. Last modified December 18, 2012. http://faculty.haas.berkeley.edu/ned/Choice_Fatigue.pdf

Bonneau, Chris W. and Melinda Gann Hall. *In Defense of Judicial Elections*. New York: Routledge, 2009.

Bowler, Shaun, Todd Donovan and Trudi Happ. "Ballot Propositions and Information Costs: Direct Democracy and the Fatigued Voter." *The Western Political Quarterly*, 45 (1992): 559-568.

Burnham, Walter D. "The Changing Shape of the American Political Universe." *The American Political Science Review* 59, (1965): 7-28.

Caufield, Rachel Paine. *Inside Merit Selection: A National Survey of Judicial Nominating Commissioners*. Des Moines: American Judicature Society, 2012.

Champagne, Anthony. "Tort Reform and Judicial Selection." *Loyola of Los Angles Law Review* 38, (2005): 1483-1516.

Clark, Mary. "Advice and Consent vs. Silence and Dissent? The Contrasting Roles of the Legislature in U.S. and U.K. Judicial Appointments." *Louisiana Law Review* 71, (2011): 451-502.

Cleveland Plain Dealer. "Cash v. Quality: Ohio's Judicial Elections Smell More of Money than Merit, and the Rules Must Change to Give Voters Meaningful Choices." March 5, 2003.

Crisp, Elizabeth. “Election won't End Fight Over Judicial Selection Conservatives Want More Voter Input and Less Control by Governor and Trial Lawyers.” *St. Louis Post-Dispatch* (Missouri), October 27, 2012.

Dubois, Philip L. *From Ballot to Bench: Judicial Elections and the Quest for Accountability*. Austin: University of Texas Press, 1980.

Geyh, Charles Gardner. “Perspectives on Judicial Independence: Why Judicial Elections Stink.” *Ohio State Law Journal* 64, (2003): 43-79.

Gibson, James L. *Electing Judges: The Surprising Effects of Campaigning on Judicial Legitimacy*. Chicago: University of Chicago Press, 2012.

Gibson, James L. and Gregory A. Caldeira. “Knowing about Courts.” *2nd Annual Conference on Empirical Legal Studies Paper*. Last modified June 20, 2007: http://ssrn.com/abstract=956562

Hamilton, Alexander. *The Federalist: Number 78*. New York: Robert B. Luce Inc, 1976.

Harris Interactive. *Civics Education*. Chicago: American Bar Association, 2005. Last accessed April 29, 2013. http://www.justiceteaching.org/resource_material/ABASurvey.pdf

Johnson, Charles A, Roger C. Schaefer, and R. Neal McKnight. “The Salience of Judicial Candidates and Elections.” *Social Science Quarterly* 59, no. 2 (1978): 371-378.

Kendell, Doug. “The 200-day Club.” *Slate.com*, September 27, 2012. http://www.slate.com/articles/news_and_politics/jurisprudence/2012/09/judicial_confirmation_process_it_takes_more_than_200_days_to_join_the_federal_bench_.html

Kimball, David C. and Martha Kropf. “Ballot Design and Unrecorded Votes on Paper-Based Ballots.” *Public Opinion Quarterly* 69, no. 4 (2005): 508-529.

Krosnik, Jon A, Joanne M. Miller and Michael P. Tichy. “An Unrecognized Need for Ballot Reform,”' in *Rethinking the Vote: The Politics and Prospects of American Election Reform,* edited by Ann N. Crigler, Marion R. Just and Edward J. McCaffery, 51-74. New York: Oxford University Press, 2004.

Liptak, Adam and Allison Kopicki. “Approval Rating for Justices Hits Just 44% in New Poll.” *New York Times*, June 8, 2012, New York edition.

Lovrich, Nicholas P. Jr and Charles H. Sheldon. “Voters in Contested, Non-partisan Judicial Elections: A Responsible Electorate or a Problematic Public?” *Western Political Quarterly* 36, no. 2, (1983): 241-256.

Meredith, Marc and Yuval Slanat. “On the Causes and Consequences of Ballot Order-Effects.” *Political Behavior* 35, no.1 (2013): 175-197.

Miller, Joanne M. and Jon A. Krosnic. “The Impact of Candidate Name Order on Election Outcomes.” *Public Opinion Quarterly* 62, no.3 (1998): 291-330.

Milligan, William T., and James E. Pohlman. “The 1968 Modern Courts Amendment to the Ohio Constitution.” *Ohio State Law Journal* 29, (1968): 811-848.

Norden, Lawrence. “Letter to Governor Haley Barbour.” *Brennan Center for Justice*, September 11, 2008.
http://www.brennancenter.org/sites/default/files/legacy/Democracy/09.11.08.MS.Letter.pdf

O'Connor, Sandra Day. “The Essentials and Expendables of the Missouri Plan.” *Missouri Law Review* 74, (2009): 479-494.

Opinion Strategies. *Ohio Statewide Survey*. Washington DC: League of Women Voters, October 2002.

Pew Research Center for the People and the Press. *Supreme Court Favorability Reaches New Low*. Washington DC: Pew Research Center, 2012.

Princeton Survey Research Associates International. *Separate Branches, Shared Responsibilities: A National Survey of the Public Expectations on Solving Justice Issues*. Williamsburg: National Center for State Courts, 2009.

PR Newswire. “Two-Thirds of Americans Can't Name Any U.S. Supreme Court Justices, Says New FindLaw.com Survey.” June 1, 2010.
http://www.prnewswire.com/news-releases-test/two-thirds-of-americans-cant-name-any-us-supreme-court-justices-says-new-findlawcom-survey-95298909.html

Rowland, Darrell. “Poll: Ohioans Support System of Selecting Judges.” *Columbus Dispatch*, December 12, 2012.
http://www.dispatch.com/content/stories/local/2012/12/12/12-justice-selection.html

Streb, Matthew. *Rethinking American Electoral Democracy*. New York: Routledge, 2008.

Strickland, S., R. Schauffler, R. LaFountain & K. Holt, eds. "State Court Organization: Table 21 Judicial Selection." *National Center for State Courts*. Last updated March 6, 2013. http://www.ncsc.org/microsites/sco/home#

Suddes, Thomas. "Knowledge Gaps in Metropolitan Ohio: Ohio Supreme Court Contests, Newspaper Editorial Pages, and the Cue-Less Reader, 1938-1998." Master's Thesis, Ohio University, 2002.

Sullivan, Kathleen. "Republican Party of Minnesota v. White: What are the Alternatives?." *Georgetown Journal of Legal Ethics* 21, (2008): 1327- 1346.

Tarr, G. Alan, and Mary Porter. *State Supreme Courts in State and Nation*. New Haven: Yale University Press , 1988.

Wattenberg, Martin P., Ian McAllister and Anthony Salvanto. "How Voting is Like Taking an SAT Test: An Analysis of Voter Rolloff." *American Politics Quarterly* 28, (2000): 234-250.