



A Proposal for Strengthening Judicial Elections

Judicial elections have been controversial in Ohio since they were first established in the Constitution of 1851. However, there is widespread agreement today that we should elect our judges. Over the last 75 years, there have been multiple attempts to do away with judicial elections in Ohio, and voters time and again have reaffirmed by large margins that they want judges to be accountable in competitive elections. Most recently, a poll in December 2012 found that more than 80 percent of Ohioans oppose doing away with elections. And yet, it is clear that our system can be improved:

- Polls show that the public views judges as susceptible to political influence.
- Voter participation in judicial elections on average is 25 percent less than participation in races for the executive and legislative branches.
- There is evidence that we can do more to educate and inform the electorate.

In a speech in May 2013 marking the 45th anniversary of the passage of the 1968 Modern Courts Amendment, Chief Justice Maureen O'Connor unveiled a proposal to strengthen judicial elections in Ohio, to empower Ohio voters, and to support the highest quality judiciary possible.

"Ohio Courts 2013: A Proposal for Strengthening Judicial Elections" offers an eight-point plan for public consideration and establishes a process for bringing people together to reach consensus on judicial reforms. Judges, lawyers, and the general public are encouraged to read the plan and offer their views on strengthening judicial elections by visiting www.OhioCourts2013.org.

"It has been 45 years since we last enacted comprehensive reforms in the Ohio judicial system," Chief Justice O'Connor said. "There is one piece of unfinished business from the 1968 Modern Courts Amendment, and that is a reform of our judicial elections. Thoughtful people have discussed the topic ever since, and I believe that now is the time to come together as a state and to arrive at a package of improvements that we can enact into law."

Chief Justice O'Connor's proposal was developed based on a careful review of previous statewide efforts to examine judicial elections in the state, including the 2003 Next Steps conference and the 2009 Forum on Judicial Selection, both of which were led by the late Chief Justice Thomas J. Moyer and included the Ohio State Bar Association, the League of Women Voters Ohio Chapter, legislative leaders, academic experts, and groups representing business and labor. The plan was shared with representatives of many of these groups before its unveiling May 9. The plan identifies a series of issues and poses questions surrounding specific potential reforms for public consideration. Over the next several months Chief Justice O'Connor is leading a public discussion about the plan on the website and in a series of meetings with the hope of refining the proposal and moving forward with a final plan in 2013.

For a detailed examination of each of these ideas and to join the conversation, visit www.OhioCourts2013.org.

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?

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

A ballot can be lengthy and voter roll-off is common. Roll-off analysis shows voters are less likely to cast votes as they move down their ballots. Ohio could address this problem by following the examples of Wisconsin and Pennsylvania, both states that conduct judicial elections separate from those for executive and legislative elections. Today, Ohioans cast ballots for judges each year – state and county judicial races in even-numbered years and municipal judgeships in odd-numbered years. The races for president and Congress, as well as statewide executive officeholders, such as governor and attorney general, often overshadow the judicial races taking place in even-numbered years. Should Ohioans amend their Constitution to allow all judicial elections to be in odd-numbered years, to avoid voter-information overload, as well as the magnetism of polarizing top-of-the ticket races? Such a change also would likely raise voter interest in “off-year” elections for municipal judgeships and other local government races.

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

Studies routinely show that 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 2003 judicial selection 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. 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. 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. Finally, 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. Should Ohio centralize and expand civic education in the law? Should there be a statewide, Web-based repository for judicial candidate information and a formal body for conducting judicial debates? 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 where the candidate's party affiliation appears on the ballot in both the primary and the general election. Fourteen of these states have explicitly non-partisan elections where the party affiliation does not ever appear on the ballot. Ohio is the only state in the country that holds overtly partisan primaries with ostensibly nonpartisan general elections where the party affiliation does not appear 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?

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 do not first get on the bench through an election but are instead appointed by the governor 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?

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 that are 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?

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

In 2003, Chief Justice Moyer hosted a forum regarding judicial impartiality. The Next Steps conference brought together a wide range of stakeholders to discuss ways to increase trust and confidence in the judiciary. One of the recommendations 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. Some states, for the trial courts, require no specific number of years in practice, but the majority 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-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?

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. It was the first major revision of Article IV of the Ohio Constitution governing the judicial branch since the Constitution of 1851. 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 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.

“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,” Chief Justice O’Connor said.

Join the conversation.
Visit www.OhioCourts2013.org.