

JUDICIAL IMPARTIALITY THE NEXT STEPS



A CALL TO ACTION MAY 2003

A preliminary report on
forum proceedings
of March 6, 2003

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Judicial Impartiality: The Next Steps

A CALL TO ACTION

A preliminary report on forum proceedings
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Forum convened by:

The Ray C. Bliss Institute of Applied Politics
The John Glenn Institute for Public Service and Public Policy
League of Women Voters of Ohio
Chief Justice Thomas J. Moyer, Supreme Court of Ohio
The Ohio State Bar Association

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INTRODUCTION

The importance of an impartial, highly qualified judiciary is one of the cornerstones of an effective democracy. Unfortunately for Ohio, the past few election cycles have led to the public perception that there is a relationship between the funding of judicial campaigns and decisions made by judges. These contentious elections have also created the perception that judicial candidates are not necessarily well qualified to serve as justices; rather they are the candidates with the most political support and funding.

Thirty-three of Ohio's most politically involved citizens were convened, March 6, 2003, to discuss Ohio's judicial selection system, and in particular the selection of Ohio Supreme Court justices. Conveners included Chief Justice Thomas J. Moyer of the Supreme Court of Ohio, the League of Women Voters of Ohio, the Ohio State Bar Association, the John Glenn Institute for Public Service and Public Policy, and the Ray C. Bliss Institute of Applied Politics. The conversation proceeded for eight full hours, with only minor breaks. The results of this dialogue are summarized in this report. A complete video of the discussion is available at <http://www.thenextsteps.org/news/forumclips.html>. A full list of participants and sponsors is available at <http://www.thenextsteps.org> and is attached as an appendix.

The Forum brought together interested individuals from various political backgrounds, who are concerned with the qualification of judges and judicial campaigns. Participants expressed interest, both before and during the Forum, in exploring better, more effective methods for selecting judges and a selection process that removes the taint of escalating campaign contributions and restores civility to the process of choosing justices. The goal of the participants was to discuss options for a system of judicial selection that is more likely to preserve the integrity and impartiality of the courts, and one that is not only fair, but perceived to be fair by the public. The conveners asked participants to develop a plan of action on the various alternatives they deemed feasible. Three specific objectives were laid before the participants:

1. Identify consensus on as many issues as possible;
2. Create workgroups to develop specific proposals;
3. Move toward improving Ohio's judicial selection system.

SHARED VALUES AND CONCERNS REGARDING THE JUDICIARY

The Forum participants agreed that all judges should possess characteristics that qualify them to hold the position. These included traits such as intelligence, experience, humility, integrity, empathy, and common sense. The participants generally agreed that it is important for a judge to be seen at community functions, where they can meet different citizens from various groups, allowing them to learn more about the citizens they represent. Qualified judges must also have a deep understanding of the diversity of the citizens across the state and their concerns and interests.

Many participants noted the importance of judicial involvement in a case--where a judge takes time to understand the real issues surrounding the case, does a necessary amount of legal research into the case, and does not assign the case to a clerk or magistrate. Additionally, participants agreed that it is important to have a judge who can make a timely decision, which is written logically and in a manner that can be easily understood. The participants, whether attorneys or nonattorneys, agreed that a judge needs to be impartial and able to judge a case on the facts, with no bearing on the individuals involved or past political support. They need to be fair to all parties involved and treat each person with respect and courtesy.

However, the participants in the Forum all agreed that the current method by which judges are selected in Ohio often blocks qualified judges from being chosen to serve on the bench.

The majority of the complaints made by the participants concerning the current selection process dealt with the campaign process, in which judges are selected by voters in a nonpartisan general election. In recent elections, independent groups have contributed and spent significant amounts of money, which do not have to be reported to any governing body. They also have turned to negative campaigns and personal attacks, to which the judicial candidate feels unable to respond. The candidate often loses control of the campaign to the independent groups. Many participants noted that this problem is exacerbated by a lack of information about the candidates to assist voters in choosing the most qualified candidate.

There are many consequences of these events. First, many qualified candidates do not seek office, leading to many uncontested judicial elections. Second, and possibly more important, escalating campaign contributions lead to the perception that the judiciary is for sale. These factors affect the public's image of the court and raise serious questions about a judge's ability to remain impartial. The public's perception of the races is also skewed by the unofficial partisan nature of Ohio's nonpartisan judicial elections.

ISSUES TO ADDRESS

The free-flowing conversation at the Forum unearthed several specific policy issues recommended for further consideration. One very important issue was judicial qualifications and eligibility requirements. Many presenters commented that they have confidence in Ohio's current judges, but they would like to see the qualifications heightened, especially at the local level. Several suggestions were posed for raising the qualifications. However, a few participants expressed concern about recruiting strong contenders under the current system. They suggested raising the standards would make recruitment more difficult.

Another issue was public funding of campaigns. Some participants felt public funding would give the perception of greater judicial independence. Some noted that a form of public funding is already in place. Others were opposed to increased public funding. Some consensus was found around the idea of state-produced voter guides. These guides would give each qualified candidate a public forum for communicating his or her qualifications and improve voter awareness of candidates.

The issue of public disclosure of campaign finances also received considerable attention. Most participants supported increased disclosure. A few feared it would have a chilling effect on those who contribute to judicial races. Some discussion arose around the idea of appointing judges, followed by a retention election. Concern was expressed about who would be the appointing authority and what would be the qualifications for appointment.

Participants expressed concern over the diversity of Ohio's judiciary. Few suggestions for enhancing diversity were forthcoming, but generally participants agreed the matter needed study. Some noted that under the current system parties make an effort to recruit candidates of diverse backgrounds.

Considerable discussion focused on campaign advertising content. A variety of suggestions were offered. Some felt an authority was needed with the power to challenge ad content during a campaign. Others felt judicial candidates need more freedom to respond to negative attacks and more control over their own campaign message.

Finally, judicial compensation was raised as an issue. Generally, participants felt that if terms were lengthened and compensation was raised, higher quality candidates would be attracted to the judiciary.

WORKGROUP DESCRIPTIONS

The discussion led to the creation of four workgroups. Each workgroup will examine the issues assigned to it and report back to the conveners. Participants volunteered to join one or more workgroups. The major issues to be addressed by each workgroup are described below.

Judicial Qualifications Workgroup

The main question for this group is, should Ohio change the requirements that determine who is eligible to run in a judicial election? Requiring more legal experience could give Ohioans higher quality decisions and could change the public perception of the judiciary. Another idea is to create a special "judges' college" that teaches aspiring judges the basics of court administration. Individuals would be required to graduate from this college either before they could run for judge or before they could serve on the bench after being elected.

Plans to change eligibility requirements should be carefully designed to fit the realities of judicial campaigns, particularly the concern expressed by some rural communities that they already lack qualified candidates.

Term Lengths Workgroup

The main question for this group is: should Ohio change the length of judicial terms? Lengthening a judge's tenure can help provide judges with greater independence by insulating them from public and political pressure, yet there is great interest in ensuring that judges remain accountable to the public. Longer terms reduce the frequency with which judges must engage in fundraising and campaigns, thus providing judges with more time to concentrate on the administration of their courtrooms. Some have suggested that longer terms, coupled with enhanced compensation, would increase the quality of candidates, because the security of a longer term and adequacy of compensation helps attract a deeper pool of candidates.

Voter Education/Public Funding Workgroup

The main questions for this group are, should the state government give candidates money to help fund their judicial campaigns, and should the state itself issue campaign communications to help educate the public about judicial candidates?

Whole or partial public financing could reduce the amount of time candidates spend on fundraising, allowing them to concentrate on other campaign duties. Some participants thought public financing could help reduce the importance of money in campaigns, but others questioned this idea. In addition, there are serious questions regarding the qualifications for receipt of public funding.

Another proposal suggested at the Forum was a special version of public financing that could be used when candidates are attacked by negative advertising, particularly ads by independent groups. Candidates who are attacked in this way would get a predetermined amount of money that could be used to combat the attack ad. Volunteers working on this problem should pay special attention to the question of what kinds of ads would trigger the fund.

Finally, some participants suggested the government should distribute basic, impartial information to voters (by mail or otherwise) about judicial candidates. This information would help voters make an informed choice and relieve candidates of part of the burden of informing voters themselves. It could also educate voters and give them a better appreciation of the judicial branch.

Independent Campaign Finance Disclosure Workgroup

Most of the participants at the Forum wanted to change state laws governing the disclosure of Ohio campaign contributions and independent expenditures.

Many of these wanted to augment the statutes by increasing the number of required disclosures, but others wanted to limit disclosures to ensure a free exercise of First Amendment rights. In the context of judicial campaigns, many people thought new mandatory disclosure rules could help curb independent attack ads by holding accountable the sponsors of the negative ads. Volunteers in this group will need to hammer out the details of how the rules should be tailored to find consensus.

One interesting proposal was to require sponsors of independent advertisements to provide a copy of the advertisement, before publication, to the candidate on whose behalf the advertisement will be broadcast. The purpose of this would be to provide that candidate with the opportunity to disclaim the advertisement. Participants also suggested that the

advertisements carry a clear disclaimer that the advertisement is being aired without the endorsement of any candidate identified in the advertisement.

An important limit is that whatever disclosure plan is selected, it needs to be constitutional. Some participants at the Forum expressed concerns that new disclosure plans might be unconstitutional under the U.S. Supreme Court cases *Buckley v. Valeo*, *McIntyre v. Ohio*, and others.

JUDICIAL SELECTION

Many participants expressed interest in changing the method of selecting Supreme Court justices. Currently, Ohio has a system in which all judges and justices are subject to contested election. However, many judges and justices first come to the bench by gubernatorial appointment to a vacancy created by resignation or death. Some participants wanted to shift the method of selecting Supreme Court justices to an appointive/elective system, but there was little consensus on how this system should be established. Many participants were opposed to any appointive/elective system and preferred traditional judicial elections. Some participants thought a modified method of selection could reduce the amount of money involved in Ohio judicial campaigns.

Another goal to think about is diversity. Can the selection process be changed to generate a more diverse judiciary? How would this be accomplished?

Because of a lack of consensus, no workgroup was formed on the subject to selection.

MISCELLANEOUS PROPOSALS

There were many other important proposals at the Judicial Impartiality Forum that did not fit into the specific tasks assigned to the workgroups. These proposals include:

1. Creation of an independent campaign fact-finding committee. This committee could act quickly to decide whether a political advertisement is misleading and give its opinion to the media.
2. Changing the judicial canons to allow candidates to make more explicit statements on television commercials. One participant suggested this issue might be moot after a recent U.S. Supreme Court case because such statements are already allowed.
3. Addressing frivolous campaign litigation used for publicity purposes. However, not everyone agreed that this was a problem.

CONCLUSION

The current Ohio judicial selection process endured difficult elections in both 2000 and 2002. These elections have caused the public to question the independence and integrity of Ohio's Judiciary. Involved citizens around the state are concerned about both the perception and the reality of these problems. The conveners of this Forum called representatives of Ohio's key political institutions together on March 6, 2003 to discuss remedies. Participants proposed a number of issues and many potential solutions. Workgroups were formed to develop specific policy recommendations. These workgroups are called upon to take up the challenge and report back to the conveners with specific options for reform.

Registered Participants in the March 6, 2003 Judicial Impartiality Forum

Gary Allen <i>Ohio Education Association</i>	Robert Bennett <i>Ohio Republican Party</i>	Hon. Todd Book <i>Ohio House of Representatives</i>
Duard Bradshaw* <i>Ohio Hispanic Bar Association</i>	Sandy Buchanan <i>Ohio Citizen Action</i>	William Burga <i>AFL/CIO</i>
Eric Burkland <i>Ohio Manufacturers Association</i>	Dale Butland <i>Butland & Associates</i>	John Butte <i>Ohio News Network</i>
Hon. Kevin Coughlin <i>Ohio Senate</i>	Andrew Doehrel <i>Ohio Chamber of Commerce</i>	Hon. Donald Ford <i>Ohio Court of Appeals Judges Association</i>
Judy French <i>Governor Bob Taft's Office</i>	Hon. Timothy Grendell <i>Ohio House of Representatives</i>	Hon. Sandra Harwood <i>Ohio House of Representatives</i>
Hon. Leigh Herington <i>Ohio Senate</i>	Paula Hicks-Hudson* <i>Thurgood Marshall Bar Association</i>	John Holschuh, Jr. <i>Ohio Metro Bar Association</i>
Hon. Jeff Jacobson <i>Ohio Senate</i>	Hon. Cheryl Karner <i>Ohio Judicial Conference</i>	Hon. Evelyn Lundberg Stratton <i>Supreme Court of Ohio</i>
Ron Malone <i>AFSCME</i>	Terry McCoy <i>League of Women Voters</i>	James McCrystal, Jr. <i>Ohio Association of Civil Trial Attorneys</i>
Hon. Ray Miller <i>Ohio Senate</i>	Chief Justice Thomas Moyer <i>Supreme Court of Ohio</i>	Suzanne Nigro <i>Ohio Women's Bar Association</i>
Hon. Paul Pfeifer <i>Supreme Court of Ohio</i>	Hon. John Pickrel* <i>Association of Municipal and County Court Judges of Ohio</i>	Ty Pine <i>National Federation of Independent Business</i>
Hon. Robert Ringland <i>Ohio Common Pleas Judges Association</i>	Eric Seabrook <i>Secretary of State Kenneth Blackwell's Office</i>	Hon. William Seitz <i>Ohio House of Representatives</i>
Curt Steiner <i>Steiner/Lesic Communications</i>	Frank Todaro <i>Ohio Academy of Trial Lawyers</i>	Dennis White <i>Ohio Democratic Party</i>

*Unable to attend

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