

MONDAY, MAY 9, 2022

ON THE MOVE

LETTER TO THE EDITOR

Judicial elections are actually a good idea

Judge Michael Stern argued in the 5/3/22 edition of the Daily Journal that it is time to end contested superior court judicial elections. While Judge Stern should be credited with raising the issue of judicial elections for public discussion, making solid arguments, and clearly articulating his point of view, his argument is faulty and should be rejected. However, he is correct that the topic of how judges are selected and how long they stay in office should be reconsidered.

First, Judge Stern describes the appointment process, noting the “lengthy application” applicants must fill out and which the Judicial Nominations and Evaluation Commission (“JNE”) thoroughly investigates and evaluates. However, he incorrectly states that attorneys running for office are not similarly vetted. In fact, the LA County Bar Association’s Judicial Election Evaluation Committee (JEEC) follows the same extensive evaluation process, also requiring a lengthy application plus an interview with a check of as many as 75 different references, plus a full committee analysis. If a candidate does not cooperate with the JEEC (a rarity), the committee still performs a thorough investigation and rates the candidate. JEEC also has the same rating system as JNE and publishes those ratings for all voters to see – for example, in the current June 7 primary election, the JEEC has rated nine of the candidates “Unqualified,” while rating eleven

candidates as “Qualified,” thirteen as “Well Qualified,” and two as “Exceptionally Well Qualified.” Moreover, judicial candidates are interviewed and investigated by the media, including the LA Times, which issues endorsements with explanations of its reasoning, and the Metropolitan News, which does the same. On top of all that, to the extent candidates seek endorsements from other organizations, they are interviewed and respond to a variety of questions from interested members of the voting public.

Candidates also often create websites to provide information to the public about their qualifications and seek endorsements from sitting judges. Simply put, judicial candidates for election are actually investigated and evaluated more thoroughly than appointed ones, and the candidates are publicly vetted, while in contrast the governor’s appointment process happens behind closed doors. And, there is no evidence that the many currently sitting judges who obtained their offices through election are any less capable than or not performing as well as their appointed brethren.

Second, some extremely qualified judicial applicants may not be appealing to the current governor for various political reasons – perhaps they are members of the wrong political party or are not the type of person (e.g., race, age, sex, ethnicity, religion, etc.) that the governor for political reasons wants to appoint.

The election process allows an

opportunity for a qualified candidate to ascend to the bench who just doesn’t have the necessary “juice” with the current governor and his/her administration. For example, many judges who have been duly elected were former assistant district attorneys who were experienced courtroom lawyers, but were not able to be appointed for purely political reasons. And, the governor has at times delayed appointments in an effort to limit costs or because of the press or other matters – which leaves seats vacant and places extra pressure on the sitting bench. Judges who are elected fill those empty offices at the outset of their term. Further, that people can become judges who are not the choice of any particular governor actually allows greater diversity on the bench.

Third, there is a benefit to have an additional “check” on a judge who faces the possible, albeit unlikely, prospect of being challenged for his or her office if not performing. For example, two judges are being seriously challenged in the upcoming election. Judge Stern correctly notes that the California Commission on Judicial Performance (CJP) scrutinizes judicial conduct and takes necessary disciplinary action, but what is wrong with having the additional apparatus of a challenge? At a time when sadly there are those in our country who question democratic election processes, now is not the moment that voters should have the right to vote on such a powerful office

taken away. After all, a judicial term is six years and there are no term limits (although perhaps there ought to be), so a judicial appointment is typically a lifetime appointment since sitting judges are rarely challenged. The courts have enormous power in our society and directly touch the lives of individual people, arguably more than any other institution. Why not have that additional check by the voters on such a powerful position?

Other changes might make the process better, such as providing more information about each candidate on the ballots, since current law does not allow attorneys to indicate their experience and also gives any government lawyer a significant and unfair advantage because government lawyers can include their full title under their name as their ballot designation (such as “Assistant District Attorney for Los Angeles County”), while private practitioners can only list themselves as “attorney.”

Also, as suggested above, perhaps there should be a limit on the number of terms or years that a judge can serve, but eliminating the rights of citizens to vote on the judges that will have enormous power over some of their lives would not be an improvement.

– **Tim Rueben** is the founder of the litigation boutique Reuben Raucher & Blum. He was an unsuccessful judicial candidate in the 2020 election and is currently a judicial candidate for the upcoming 2022 election.

Reprinted with permission from the *Daily Journal*. ©2022 Daily Journal Corporation. All rights reserved. Reprinted by ReprintPros 949-702-5390.