2013-04-01

The Best Way to Select State Court Judges

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The Best Way to Select State Court Judges

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The Problem

Large Spending Increases in Judicial Campaigns

Example: Nevada
2003: Nevada Supreme Court allows the state legislature to begin taxing casinos and the tourism industry.
2004: Judicial candidates in Nevada spend over $3 million, three times the amount spent in the previous election.
2006: Nevada judges raised $2 million, with $300,000 coming from casinos, $120,000 of which came from MGM casinos alone. Nearly all of the justices involved in the 2003 decision were replaced by 2006, and the 2003 decision was eventually overturned.

State Court Judges Taking Controversial Positions on High Profile Issues

Example: Iowa
2009: Iowa’s Supreme Court decides unanimously to legalize same-sex marriage in the state.
2010: Voters failed to retain the only three members of the Iowa Supreme Court that were up for retention, marking the first time that any Iowa Supreme Court justices failed to be retained since Iowa adopted the retention system.

The Alternatives

Appointment = Choosing state court judges through appointment by the governor and ratification by the legislature or a special commission, typically for long terms such as for life.

Partisan Elections = Choosing state court judges through elections in which the candidates’ political affiliations appear on the ballots. The candidates are elected for a term, and they maintain their positions through reelection.

Non-Partisan Elections = Choosing state court judges through election in which the candidates are not identified by political affiliation on the ballots. The candidates are elected for a term, and they maintain their positions through reelection.

Merit Plan = Choosing state court judges through nomination by a nonpartisan commission followed by appointment by the governor for a term. At the end of their term, state court judges maintain their positions by running unopposed in retention elections.

Combination of Methods = Choosing the states’ highest court judges through either Appointment or the Merit Plan and the states’ lower court judges through either Partisan or Non-Partisan Elections.

Federal Solution = Using the Federal Courts to limit the amount of campaign contributions in elections of state judges by requiring judges to recuse themselves from cases involving large campaign donors, as the United States Supreme Court did in Caperton v. A.T. Massey Coal Co.

Evaluating the Alternatives

A Summary of State Judicial Selection Alternatives in Terms of Policy Goals

<table>
<thead>
<tr>
<th>Goals</th>
<th>Appointment</th>
<th>Partisan Elections</th>
<th>Non-Partisan Elections</th>
<th>Merit System</th>
<th>Combination</th>
<th>Federal Solution</th>
</tr>
</thead>
<tbody>
<tr>
<td>Impartiality</td>
<td>Highest</td>
<td>Lowest</td>
<td>Low (Increase)</td>
<td>High</td>
<td>Medium (but strategic)</td>
<td>High (Increase)</td>
</tr>
<tr>
<td>Political Accountability</td>
<td>Low</td>
<td>Highest</td>
<td>High</td>
<td>Medium (but strategic)</td>
<td>Medium (but strategic)</td>
<td>Low (Decrease)</td>
</tr>
<tr>
<td>Qualification for Position</td>
<td>High</td>
<td>Low</td>
<td>Lowest</td>
<td>High</td>
<td>Medium (but strategic)</td>
<td>High (Increase)</td>
</tr>
<tr>
<td>Political and Practical Feasibility</td>
<td>Low</td>
<td>Medium</td>
<td>Medium (just above partisan elections)</td>
<td>Medium-Low</td>
<td>Highest</td>
<td>High</td>
</tr>
<tr>
<td>Efficiency</td>
<td>Highest</td>
<td>Lowest</td>
<td>Low</td>
<td>High</td>
<td>Medium</td>
<td>High (Increase)</td>
</tr>
</tbody>
</table>

States Identified by Their Method for Selecting State Court Judges

KEY:  
- Appointment  
- Partisan Elections  
- Non-Partisan Elections  
- Merit Plan  
- Combination of Methods

The Recommendation

The best alternative is to choose the states’ highest court judges through Appointment and the states’ lower court judges through Non-Partisan Elections. On top of that alternative, the Federal Solution should be employed to limit campaign contributions in the Non-Partisan Elections by using the federal courts to require recusal in cases involving large campaign donors.

Sources