OhioJudicial Reform.org

A Plan to Elevate Judicial Elections

May 2014

By Maureen O'Connor
Chief Justice, Supreme Court of Ohio

Ohio Judicial Reform: A Plan to Elevate Judicial Elections

By Maureen O'Connor

Based solely on the candidates' last names, in 1976, The Toledo Blade endorsed A. William Sweeney over his opponent Don P. Brown for the Ohio Supreme Court. Expressing its disgust for the notorious "name game" in Ohio judicial campaigns, the newspaper opined: "Well, voters must choose either the Brown or the Sweeney. We give a nod to the latter solely on the grounds that there already are two Browns sitting on the high court, whereas there are no Sweeneys. It is, we readily grant, a poor basis for picking a Supreme Court justice, but it's no more stupid than the selection system which sets up such ridiculous predicaments."[1]

As someone who has had the good fortune to run successfully on the ballot from the local level to statewide in Ohio for the better part of three decades with a name like Maureen O'Connor, I have a particular perspective on this topic. In addition to experiencing the system first hand, I have spent several years studying judicial elections and discussing the topic with judges, lawyers, law professors, legislators, and everyday Ohioans. I have reviewed the literature, studied the election data, and read every blue ribbon commission report that has been written since the mid 20th Century on Ohio's judicial selection system.

I have arrived at an inescapable conclusion: We have to offer the voters a better way to select judges; one not based on the 'name game,' but on information and focus.

Judicial elections aren't going anywhere because the people of Ohio have spoken loud and clear that they want to elect their judges. So, we must do what we can to elevate judicial elections, empower voters, and ensure that decisions about who will serve on the bench are made based on more than the happenstance of ancestry and marriage.

The name game is really just one of the problems with our current system. Polls show that even though Ohioans want to continue to elect judges, they believe that judges are influenced by politics, by contributions, and by other factors. In addition, the numbers are clear that at least one quarter of the people who go to the polls on Election Day do not bother to vote for judges. Additionally, the level of knowledge and understanding about the judiciary among the general public is inadequate, and voters do not have easy access to quality information about the candidates.

This paper proposes a three-point plan for reforming judicial elections in Ohio. In May 2013, after careful study and examination of the history of judicial elections in Ohio and previous

[1] 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), p. 55.

reform efforts, I proposed for consideration eight ideas to strengthen judicial elections. I spent a year touring the state from Lake Erie to the Ohio River and in between to discuss these ideas. I visited gatherings large and small, from statewide conferences to noon Rotary meetings. Among others, I met with the leadership of the Ohio Judicial Conference, the Ohio State Bar Association, the League of Women Voters, and the leadership of the General Assembly and the Executive branch. I presented the plan to the Ohio Constitutional Modernization Commission and met with almost all of Ohio's organized labor groups.

I placed my research along with the eight ideas online and encouraged judges, attorneys, groups, and the general public to weigh in on the proposals through an interactive feature on the site.[2] We received considerable feedback from thoughtful individuals and organizations across the states. While there was not unanimous consensus on the specific proposals, there was one view that was nearly universal: We can do better.

"There's a crisis of confidence when it comes to electing judges," the Cincinnati Enquirer declared in an editorial.[3] The veteran Statehouse journalist Thomas Suddes, who has studied Ohio Supreme Court elections as closely as anyone, wrote, "Even though judges are, arguably, Ohio's most powerful elected officials, voters typically know less about those men and women than, say, about Ohio State's win-loss record in football, or LeBron James' wedding."[4]

"A look at the tallies in judicial contests reveals that up to 40 percent of Cuyahoga countians who voted for president simply skipped judgeship contests. Yet judges have, both in literal and symbolic terms, the power of life or death," Suddes wrote. "The Election Day judicial deck is now stacked against Ohioans because of timing and ballot clutter. O'Connor, in effect, wants to offer better odds – to favor the voters."[5]

I was grateful that the Ohio Common Pleas Judges Association was among the groups that weighed in favor of having this conversation. They adopted a resolution that states in part: "If public confidence in the judiciary can be by any of the eight proposals put forth by the Chief Justice, the organization believes these issues are worthy of discussion. Speaking on behalf of the trial bench in Ohio, this organization agrees that partisan politics plays no role in the function of an independent judiciary."[6]

---

[2] http://ohiocourts2013.org/.
[3] *Cincinnati Enquirer*, "Our plea: Why no contest?," (October 30, 2013): A14.
[4] Thomas Suddes, "Ohio can shake up the system; to help elect better judges," *Columbus Dispatch*, (September 15, 2013): 6F.
[5] Ibid.
[6] Letter from Jonathan P. Hein, judge of the Darke County Court of Common Pleas and president of the Ohio Common Pleas Judges Association, April 4, 2014.

Based on this year of discussion and feedback, it is clear to me at this time that some of these ideas – while still worthy of consideration – do not have the support that they would require to be enacted. I will address these later in the paper.

However, I believe that four of the original ideas I proposed could have the support for enactment into law. I have combined two of them into one and come up with the three-point plan detailed in this paper.

Ohio has one of the best judiciaries anywhere, and that's because of the men and women serving on the bench. But, I am as convinced as ever that we can improve the way we select judges and enhance confidence in our judiciary.

This three-point plan will significantly strengthen judicial elections in Ohio:

- ONE: Elevate judicial elections by moving them to odd-numbered years and moving them to the top of the ballot.
- TWO: Educate voters about judicial elections by encouraging them to participate and giving them the information they need to make informed decisions.
- THREE: Increase the basic qualifications to serve as a judge to make an outstanding judiciary even better.

Later in this paper, we examine each of these ideas in greater detail. First, let's examine the history of judicial elections and the problems with our current system. Some of this information and material is drawn from my original paper on this topic.[7]

A Brief History of Ohio Judicial Selection

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."[8] 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."

[7] Maureen O'Connor, *A Proposal for Strengthening Judicial Elections* (Columbus: Ohio Supreme Court, 2013). http://ohiocourts2013.org/wp-content/resources/plan.pdf

[8] 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.

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).[9] 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.[10] Even in Missouri, there are calls to abolish the Missouri plan and return to an election-based system.[11]

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.[12]

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 century, judicial elections in Ohio were dominated by party bosses, straight-ticket voting, and a general undue influence of partisan party politics.[13] 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.[14] 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

[9] William T. Milligan and James E. Pohlman, "The 1968 Modern Courts Amendment to the Ohio Constitution," *Ohio State Law Journal* 29, (1968): 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.
[10] 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.
[11] 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.
[12] Suddes, "Knowledge Gaps in Metropolitan Ohio," 13.
[13] Ibid.,18-19.
[14] Ibid., 25.

in November when they run in the nonpartisan general election. Ohio is the only state in the union with such an arrangement.[15]

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.[16] 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.[17]

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 the notion that states using the Missouri Plan have better judges than those that do not.[18] 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.

[15] G. Alan Tarr and Mary Porter, *State Supreme Courts in State and Nation* (New Haven: Yale University Press, 1988), 126.
[16] Philip L. Dubois, *From Ballot to Bench: Judicial Elections and the Quest for Accountability* (Austin: University of Texas Press, 1980), 4-5.
[17] 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*.
[18] Bonneau, *In Defense of Judicial Elections*, 135-137.

> *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.*[19]

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.*[20]

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.

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 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

[19] Ibid., 139.
[20] James L. Gibson, *Electing Judges: The Surprising Effects of Campaigning on Judicial Legitimacy* (Chicago: University of Chicago Press, 2012), 131.

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."[21] Former U.S. Supreme Court Justice Sandra Day O'Connor calls this the "Power of the Quill." She once said, "The Judicial power lies in the force of reason and the willingness of others to listen to those reasons."[22] 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

[21] Alexander Hamilton, *The Federalist: Number 78* (New York: Robert B. Luce Inc, 1976), 504.
[22] Sandra Day O'Connor, "The Essentials and Expendables of the Missouri Plan," *Missouri Law Review* 74, (2009): 489.

perception of the U.S. Supreme Court was at its lowest mark in 25 years, with Democrats and Republicans essentially both holding similar views.[23] 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.[24] This result was corroborated later last year in a poll by the New York Times and CBS News.[25] 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. [26] 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.[27] 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 moving judicial contests to odd-numbered years and to the top of the ballot. 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.

Lastly, there's more we can do to empower Ohio voters with information about their courts and their judges. This will be more fully explored in Point Three of the plan on 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.[28] We can do better.

---

[23] Pew Research Center for the People and the Press, *Supreme Court Favorability Reaches New Low* (Washington DC: Pew Research Center, 2012), 1.
[24] Ibid., 1.
[25] 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.
[26] Opinion Strategies *Ohio Statewide Survey* (Washington DC: League of Women Voters, October 2002).
[27] 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.
[28] 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.

Point 1: All Judicial Contests in Odd Years & At the Top of the Ballot

The first thing we need to do is *elevate* judicial elections. We need to lift them up. We need to make them more visible to Ohio voters and also demonstrate that they are no less valued or important than races in the legislative and executive branches. How do we do this? By taking two of the ideas I proposed last year and combining them into one: I propose that we amend the Ohio Constitution to move all judicial races to odd-numbered years while at the same time making some modest changes in the Ohio Revised Code to place these races at the top of the ballot. This would make the odd-numbered years in Ohio not the "off-year elections" as they are so often called. Instead, these years would become known as the ***judicial years***, the years when we go about the important business of electing the men and women who serve on the bench in Ohio at every level.

Judges would appear in a less-crowded field, and judicial elections would get the attention they deserve. The first thing voters would see would be judicial races. As it stands now – during presidential and mid-term elections – judicial races get lost in the shuffle. The judiciary competes for attention with partisan candidates for president, senator, congress, governor and others who are able to shout their messages while judicial candidates can only whisper. Many Ohioans don't even vote for judges because they get tired by the time they reach judges' names at the end of the ballot.

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.[29] 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.[30] 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.[31] 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.[32]

---

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

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

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

[32] 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.

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."[33] 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.[34] If candidate order is affected by this phenomenon, what about the order of the contests and issues on the ballot? It seems reasonable that the theories concerning the role of human psychology in candidate selection also can 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.[35] 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.

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.[36] 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.

[33] Walter D. Burnham, "The Changing Shape of the American Political Universe," *The American Political Science Review* 59, (1965): 9.
[34] 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.
[35] 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
[36] David C. Kimball and Martha Kropf, "Ballot Design and Unrecorded Votes on Paper-Based Ballots," *Public Opinion Quarterly* 69, no. 4 (2005): 524-525.

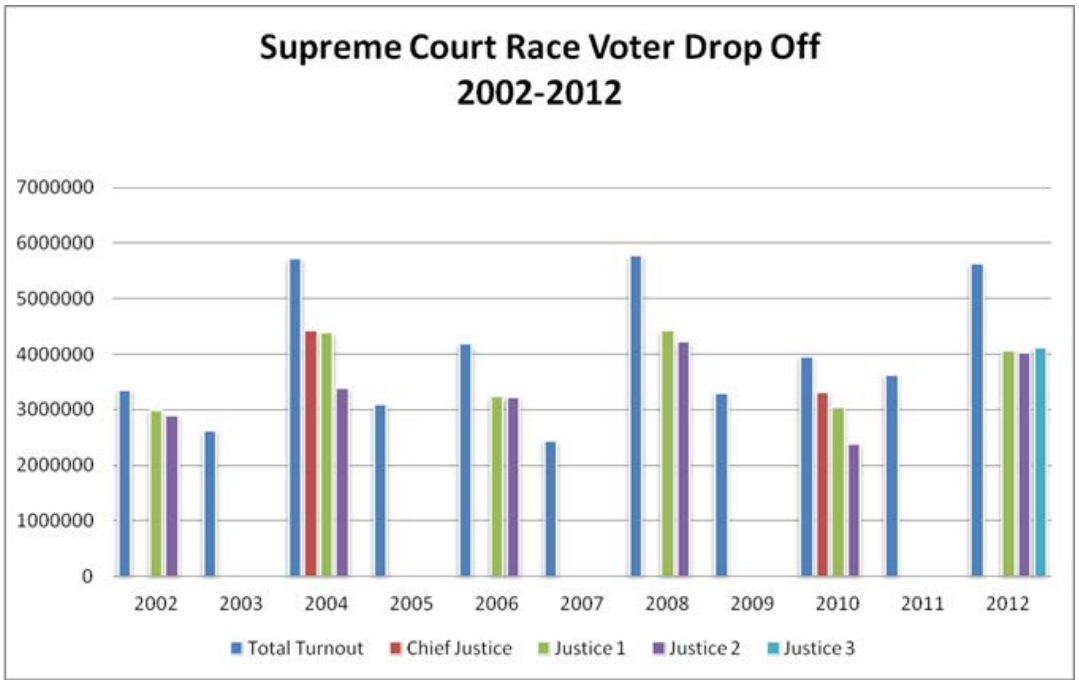

Fig. 1

The undervoting or voter roll-off in statewide judicial contests (The Supreme Court of Ohio) was as high as 24 percent in some years.[37] (Fig. 1). What follows is a look at current Ohio law and some ideas about how my proposal could be enacted.

I want to emphasize that this is an initial analysis. The specifics for instituting my proposed changes are something that would be the product of considerable discussion and analysis among policymakers. I look forward to this process and am hopeful we will find away to amend both the Constitution and the Ohio Revised Code so that when we are done, judicial elections will all appear in odd-numbered years together at the top of the ballot, thereby, over time significantly increasing voter participation in judicial contests.

Current Law

The Ohio Constitution sets forth the general election date schedule for all state and local government officials, including Ohio's judges. Specifically, 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.

[37] 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.

Under this schedule, Supreme Court justices and court of appeals judges – as state officers – and courts of common pleas judges and county court judges – as county officers – are elected in even-numbered years. In contrast, municipal court judges, as neither state nor county officers, are elected in odd-numbered years.

Difficulties Created by Current Law

As a result of this constitutionally set election schedule, state and county judicial races appear on the same ballot as federal, state, county 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 year creates several difficulties.

First, given the number of races and issues to be decided, the ballot can be lengthy. Due to the phenomenon of "roll-off," voters are less likely to cast a vote as they move down the ballot.[38] 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.[39] It is logical to conclude that the longer ballots for even-numbered elections exacerbate 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; as one study shows, less-informed voters are more likely to abstain from voting.[40]

A County Analysis

Using Delaware County for an election analysis, the Delaware County Board of Elections' final general election canvass reports[41] offer insight into the varying election types and total ballot items in each year. Specifically studying City of Delaware Precinct 3-A, our analysis covered six years– 2008 through 2013, representative of a six-year judicial term in Ohio. Precinct 3-A is within the city of Delaware proper and was one of 143 precincts in the 2013 general election.

---

[38] Ned Augenblick and Scott Nicholson, *Ballot Position, Choice Fatigue, and Voter Behavior* (Berkeley: University of California, Last modified December 18, 2102), 2. http://faculty.haas.berkeley.edu/ned/Choice_Fatigue.pdf

[39] Ibid.,4,8.

[40] Martin P. Wattenberg, 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.

[41] "Election Results and Voter Turnout History," accessed April 29, 2014, http://www.co.delaware.oh.us/boe/pastresults.html.

Delaware County, contiguous to Columbus on Franklin County's north side, is considered one of Ohio's fastest-growing counties. In fact, from 2000 to 2010, the county's population grew by more than 58 percent, from about 110,000 in 2000 to more than 174,000 in 2010.[42] It was chosen for analysis due to its generally medium-sized population within the state and the fact that its government structure is fairly standard, with three county commissioners heading county government and a city council made up of at-large and ward council members within the county seat of Delaware city.

First, it is interesting that in only two election years that were studied, only 2010 and 2013 did not have state issues on the ballots. For each year with state issues presented, voters considered at least two statewide ballot issues. In 2008, five state ballot issues were before voters.

In the odd-numbered election years we studied, only one year had judicial elections. That year, 2013, saw two municipal judgeships up for election in Delaware County. Those same odd-numbered years saw an average of six items on the ballot.

Other items typical in the odd-numbered years of 2009, 2011 and 2013 were the election of Delaware city council members and Delaware City Schools Board of Education members, as well as two city tax levies.

From an education perspective, information on the ballot items put before Delaware voters in Precinct 3-A during these odd-numbered election years was manageable. This means basic voter-information efforts likely touched a good number of voters, giving them ample information to make knowledgeable decisions when casting their votes.

The analysis of the even-numbered elections years tells a different story for Precinct 3-A voters in Delaware County. There were 31 total ballot items in 2008, 18 total items in 2010, and 23 total ballot items in 2012. Among these items in each year respectively were 5, 5, and 7 judicial races, with each even-numbered year presenting races for Supreme Court justices, Fifth District Court of Appeals judges, and common pleas court judges.

In addition to the five or so judicial races presented in these even-numbered election years, in 2008 and 2012, electors also considered federal and county executive elections – meaning president/vice president in the same years county commissioners, county prosecutors, and more were elected.

[42] "Bulletin 2011-01: Ohio Census Population for Counties," March 18, 2011, http://www.ccao.org/userfiles/CDE2011-01.pdf.

Further, within those same years, voters also elected a U.S. Senator, U.S. Representative, and state representative.

In the middle of this six-year cycle – 2010 – voters elected a governor, attorney general, secretary of state, auditor of state, treasurer of state, county commissioner, and county auditor. At the same time, they elected another U.S. Senator, a U.S. Representative, state senator, and state representative.

Each of these years likely kept voters in the ballot booth for longer periods of time as they worked through these numerous races. The statewide issues and even local tax levies likely were of great interest to voters as well.

But add judicial races at three levels to each of these even-numbered elections and the result is an information overload for voters of Precinct 3-A. I can argue that only those registered voters who either immerse themselves in politics or have a deeply held belief in carrying out their civic responsibility were likely the only voters to make truly informed decisions on most or all of their ballots.

Aside from those two groups of voters, I believe most people get caught up in watching the big-money television advertisements of the presidential candidates and the 24/7 national and international media coverage of presidential campaigns. With luck, these voters tune in to the local commercials and media coverage of Ohio-specific candidates for U.S. Senate or the U.S. House. Candidates for the Supreme Court and other courts take to the airwaves too, as well as vie for local and statewide media coverage.

When you get to the truly local level, county and municipal government, voters must depend on fliers left on front porches, and candidate information in local newspapers and on radio, as few local candidates can raise the amount of money needed to get air time during a high-profile presidential or gubernatorial election year.

Still, regardless of which even-numbered year is considered, it is true that judicial candidates at all levels are overshadowed by the perceived political importance of a chief executive, whether of our state or country. All of this is true while the very core of our judicial system – our judiciary – are entangled in a ballot web consisting of: president, governor, prosecutor, tax levy, court of appeals judge, school bonds, secretary of state, common pleas judge, water district levy, Supreme Court justice, U.S. senator, state senator, etc.

It takes a truly engaged, diligent, and intelligent voter to sort through all of these races and maneuver a ballot that leaves voters worn out. In fact, after voting for president, U.S. Senate, U.S. representative, state legislators, numerous county or state officials, there is little doubt why voters simply give up and end their voting task before completing the process. Too often,

voters stop and cast their ballots before voting for judges, local levies or options, and even state issues. Voter overload simply is not a cliché.

Delaware County Election Analysis of Ballot Items 2008 – 2013 General Elections Study of City of Delaware Precinct 3-A					
Year	**Total Number of Ballot Items for Precinct**	**Total Number of Judicial Races for Precinct**	**Judicial Races Included**	**Other Non-Judicial Races/Issues**	
2013	5	2	• 2 Municipal Court Judges	• Delaware City Council At-Large Member • Delaware City Board of Education Members	
2012	23	7	• 3 Supreme Court Justices • 3 Fifth District Court of Appeals Judges • 1 Court of Common Pleas Judge	• President/Vice President • U.S. Senate • U.S. Representative • State Representative • 2 County Commissioners • County Prosecutor • County Clerk of Courts	• Sheriff • County Recorder • County Treasurer • County Engineer • County Coroner • State Board of Education • 2 State Issues
2011	7	0	None	• City Council Ward 3 • Delaware City Schools Board of Education Members • 3 State Issues • 2 Tax Levies	
2010	18	5	• 3 Supreme Court Justices • 2 Fifth District Court of Appeals Judges	• Governor/Lt. Governor • Attorney General • Auditor of State • Secretary of State • Treasurer of State • U.S. Senate • U.S. Representative	• State Senator • State Representative • County Commissioner • County Auditor • Delaware County Tax Issue • Delaware City Income Tax Levy
2009	7	0	None	• Delaware City Council At-Large Member • Delaware City Board of Education Members • 3 State Issues • 2 Delaware City Tax Levies	
2008	31	5	• 2 Supreme Court Justices • 1 Fifth District Court of Appeals Judge • 2 Court of Common Pleas Judge	• President/Vice President • Attorney General (Special Election) • U.S. Representative • 2 County Commissioners • County Prosecutor • County Clerk of Courts • Sheriff • County Recorder • County Treasurer	• County Engineer • County Coroner • State Board of Education Member • 5 State Issues • 4 Delaware City Charter Amendments • 1 Local Liquor Option • 1 Parks District Tax Levy

Proposal

The issues of voter roll-off and ballot placement should be addressed in Ohio by following the examples of Wisconsin and Pennsylvania. Both states conduct judicial elections separate from executive and legislative elections.[43] Specifically, all judicial elections should be in odd-numbered years. This would allow judicial races to appear on a less-crowded ballot since these elections include only municipal, township, local school board races, and ballot issues. As a result of this change, voter roll-off and the tendency to vote for the first option or status-quo should decrease. Additionally, opportunities for voter outreach and education on judicial candidates and races could be increased.

Constitutional Amendment

To implement this proposal, both constitutional and statutory amendments would be necessary. First, the Ohio Constitution would need to be amended to shift the election year for Supreme Court justices, court of appeals judges, court of common pleas judges, and county court judges (i.e., "state and county judges") to odd-numbered years. Therefore, it is recommended the following amendment to Article XVII, Section 1 of the Ohio Constitution be submitted to for consideration:

> Elections for state and county officers <u>other than judicial officers</u> shall be held on the first Tuesday after the first Monday in November in even-numbered years; and elections for all other elective officers shall be held on the first Tuesday after the first Monday in November in odd-numbered years.

One-Time Term Length Change

To implement this constitutional change, consideration must be given to a one-time revision in term lengths for state and county judges. Currently, a state or county judge is elected in the even-numbered year immediately prior to the odd-numbered year in which the judge's term begins. For example, the term for a judge elected in the November 2016 election begins in January 2017.

If the election year for state and county judges was moved to odd-numbered years with no corresponding change to the term lengths, the result would find state and county judges elected in one odd-numbered year, but not taking office until the following odd-numbered year. In other words, state and county judges would not take office until more than one year after their election. For example, a judge whose term would begin in January 2017 would be elected in the November 2015 election.

[43] 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.

This time delay could be avoided by having state and county judges' terms end in the same odd-numbered year of the election for the next term. This change could be accomplished through either a one-time/one-year extension or reduction of the judges' terms.

For example, a current judge's term scheduled to end in December 2016 is helpful in explaining the effect of such a change. If the judge's term is extended one year in order to end in December 2017, then the next term would begin in January 2018; the election for that next term would be in November 2017.

The change also could be accomplished by reducing the judge's term by one year so it ends in December 2015. Under this scenario, the new term would begin in January 2016 and the election for that term would be in November 2015.

The following chart is helpful to understand the possible scenarios under a one-time/one-year extension or reduction of state and county judges' terms.

Scenario	Election Year	Current Term Ends	New Term Begins
Current law	November 2016	December 2016	January 2017
Election moved to an odd-numbered year with no change in term length	November 2015	December 2016	January 2017
Election moved to an odd-numbered year with the new term beginning one year later than normal, which results in a current term extended by one year	November 2017	December 2017	January 2018
Election moved to an odd-numbered year with the new term beginning one year earlier than normal, which results in a current term reduced by one year	November 2015	December 2015	January 2016

The implementation of a one-time/one-year extension or reduction of state and county judges' terms is dependent upon the type of judicial officer.

Supreme Court Justices, Court of Appeals Judges, and Court of Common Pleas Judges. Article IV, Section 6(A) of the Ohio Constitution provides that the General Assembly set terms for Supreme Court justices, court of appeals judges, and court of common pleas judges of "not less

than six years." Pursuant to this authority, the General Assembly set six-year term lengths.[44] Any attempt to effectuate a one-time/five-year term would necessitate a *constitutional* amendment, as it would conflict with the "not less than six years" restriction. However, there would be no constitutional prohibition against the General Assembly enacting legislation creating a *one-time/seven-year term*.

County Court Judges. Implementation of the change for county court judges is more complicated. As county courts are not established by the constitution, but rather by statute, the term-length language of Article IV, Section 6(A) of the Ohio Constitution is not applicable to county court judges. Instead, Article XVII, Section 1 of the Ohio Constitution provides that terms for judges not addressed by Article IV, Section 6(A) (i.e., county court and municipal court judges) must be "an even number of years not exceeding six as provided by law." Pursuant to this authority, the General Assembly has set six-year term lengths for county court judges.[45]

The General Assembly could not legislatively establish a one-time/seven-year term for county court judges (as it could with Supreme Court justices, court of appeals judges, and court of common pleas judges) without a constitutional amendment, as it would conflict with the "not exceeding six years" restriction. However, there would be no constitutional prohibition against the General Assembly enacting legislation creating a *one-time/ five-year term*.

Regardless, an accompanying constitutional amendment still would be necessary because Article XVII, Section 1 of the Ohio Constitution requires an even number-of-years term for county and municipal court judges. Since a one-time/five-year term creates an odd number-of-years term, this section of the constitution would have to be amended.

Delayed Implementation for County Court Judges. There are two issues affecting the timing of implementation for the proposal to move all Ohio judicial elections to odd-numbered years. First, there would be a constitutional barrier to implementing a one-time/five-year term for county court judges while the judges are currently serving those terms, because a reduced term would include a corresponding reduction in the judges' salaries and Article IV, Section 6(B) of the Ohio Constitution prohibits reductions in judges' compensation during their existing term. As a result, absent a constitutional amendment, any one-time/five-year term of office for county court judges would have to apply to a term that occurs after the legislative changes are adopted.

[44] Probate judges in R.C. 2101.02, court of common pleas judges in R.C. 2301.01, court of appeals judges in R.C. 2501.02, and Supreme Court justices in R.C. 2503.03.

[45] R.C. 1907.13.

Length of Time for Full Implementation to Occur. Second, state and county judges' terms do not end and begin uniformly throughout the state. Dates vary from court to court and judgeship to judgeship, depending upon when the court or judgeship was originally established (e.g., judges in a court established in 1959 will have terms that end one year earlier than judges in a court established in 1960). Therefore, implementation of the one-time/one-year extension or reduction in state and county judges' terms could not occur for all judges simultaneously. Instead, changes in term lengths would stagger over a period of several years as new terms begin throughout the state.

The following timeline provides an example of how the proposal could be implemented based upon a one-time/seven-year term of office, while assuming all necessary constitutional and legislative changes could be enacted in order for implementation to begin in 2015.

Year	Event
2015	Application of one-time/seven-year term length change to judges starting a new term of office in 2015.
2017	Application of one-time/seven-year term length change to judges starting a new term of office in 2017.
2019	Application of one-time/seven-year term length change to judges starting a new term of office in 2019.
2021	First election at which judges are elected in an odd-numbered year.
2023	Second election at which judges are elected in an odd-numbered year.
2025	Third election at which judges are elected in an odd-numbered year and the first year where all judges are back to serving six-year terms (i.e., full implementation).

Ballot order

R.C. 3505.03 and 3503.04 set forth the order of offices on an election ballot, dividing them between the "office type" and "nonpartisan" ballots. However, in establishing the ballot order, the Revised Code does not create separate ballot orders for even-year elections and odd-year elections. Rather, it creates one ballot order that is applicable for all elections, regardless of year.

For example, R.C. 3505.04 establishes the following order for the nonpartisan ballot:

- Member of the State Board of Education;
- State judicial offices;
- District judicial offices;
- County judicial offices;
- Municipal and township offices in which primary elections are not held;
- Municipal offices of municipal corporations having charters which provide for primary elections;
- Offices of member of a board of education.

This statutorily set order would lead one to believe that county judicial offices appear before municipal offices on the ballot. However, because elections for county offices are held in even-numbered years, while elections for municipal offices are held in odd-numbered years, elections for county judicial offices do not actually appear on the same ballot as municipal offices.

To avoid confusion and clarify ballot order, the General Assembly should consider amending R.C. 3505.03 and 3503.04 to establish separate office type and nonpartisan ballot orders for even-year and odd-year elections.

Finally, several "harmonizing" statutory amendments would be needed. Specifically, the Revised Code currently contains references to state and county judge elections occurring in even-numbered years (e.g., R.C. 1907.13, 2101.021, 2501.011, 2501.012, and 2501.013). These statutes would have to be amended to reflect the change to odd-numbered years.

Point 2: Voter Education and Engagement

But elevating judicial elections is not enough. The second piece of my plan is integral to the first. It is not enough that we simply highlight judicial elections so that more voters go to the polls and cast a ballot for their judges. We must also take active measures to encourage voter participation *and* give voters the information they need to make informed choices.

So, the second component of this plan is the launch of a comprehensive voter engagement and information program. The program I envision will for the first time provide voters statewide with a website that will be a one-stop-shop for quality information about the candidates for judge at every level. The program also will use traditional media, social media, and other methods throughout the year to educate voters about the responsibility they have to participate in judicial elections and to actively encourage them to meet this responsibility.

When taken together with my proposal to move judicial elections to separate years and up to the top of the ballot, the result will be *more* citizens voting for judge and doing so in an *informed* way. More of these citizens will make their votes based on quality, substantive information about the candidates and their qualifications for office.

In his 2005 State of the Judiciary Address, the late Chief Justice Thomas J. Moyer said: "Judges, lawyers, and all who seek to preserve the impartiality of the courts must speak out; we must remind citizens that an independent judiciary is the best protector of our constitutional democracy. We are judges; we must also be teachers. That is our legacy."

In some ways we have not always done the best job living up to this legacy. A recent edition of a statewide high school quiz show featured the "Bonus Question" that asked simply: "Name the Chief Justice of the Supreme Court of Ohio." After a long silence, one side weighed in, "Harrison?" The poor young man had a sly smile betraying that it was a desperate guess. The other side answered with some measure of confidence, "Earl Warren."[46]

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.[47] 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.[48] 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.[49]

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.[50] In 2003, a poll by the League of Women Voters

[46] "Olmsted Falls v. Upper Arlington," *10TV Westfield Insurance Brain Games*, aired April 14, 2014 (Columbus, OH: WBNS 10-TV). http://www.10tv.com/content/sections/video/index.html?video=/videos/Brain_Game/2014/olmsted-falls-v-upper-arlington.xml (20:35)

[47] *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

[48] Harris Interactive, *Civics Education* (Chicago: American Bar Association, 2005. Last accessed April 28, 2014), 7. http://www.justiceteaching.org/resource_material/ABASurvey.pdf

[49] Princeton Survey Research Associates, *Separate Branches, Shared Responsibilities*, 14-15.

[50] Nicholas Lovrich, Jr. and Charles H. Sheldon, "Voters in Contested, Non-partisan

found less than 4 percent of Ohioans could name even one justice on the Ohio Supreme Court.[51]

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.[52] 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."[53]

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.[54] 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.[55] Candidates for lower court seats in California may be included in the guide; however, they must incur some expense, thus limiting participation.[56]

The plan I propose will enable Ohio to follow the recommendation of the 2003 report on judicial selection and support a statewide judicial voter guide and to do so without the expense of state tax dollars.

We will accomplish this thanks to the willingness of three key partners to join together in this effort: the Ohio State Bar Association, the League of Women Voters Ohio Chapter, and the Bliss Institute of Applied Politics at the University of Akron.

Judicial Elections: A Responsible Electorate or a Problematic Public?" *Western Political Quarterly* 36, no. 2, (1983), 247.

[51] *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): B8.

[52] Dubois, *From Ballot to Bench*, 69.

[53] Bonneau, *In Defense of Judicial Elections*, 30.

[54] American Judicature Society, *Judicial Campaigns and Elections: Voters Guide* (Last accessed April 28, 2014). http://www.judicialselection.us/judicial_selection/campaigns_and_elections/voter_guides.cfm

[55] Ibid.

[56] Ibid.

The 30,000 members of the bar in Ohio will be an effective army of supporters to encourage Ohioans to use this powerful new tool. I want to thank the leadership for having the vision to see the importance of this work.

Since 1920, the League of Women Voters has worked to support an informed and engaged electorate. Their networks and resources will contribute to the success of our efforts.

The Bliss Institute's Executive Director John Green has been an enthusiastic supporter and participant. Housing the program at the institute will give us the necessary resources we need to launch next year, and it will give us the credibility that comes with an institution of higher learning of its standing.

By combining the existing resources and abilities of these organizations, we will be able to launch this program for the 2015 judicial races without the use of any tax dollars. Moving forward, we envision that this will become a permanent fixture of Ohio judicial elections.

I believe this has the potential to be a national model. Once again, Ohio leads the way.

Point 3 Increased Qualifications

In 2003, Chief Justice Thomas J. Moyer hosted a forum regarding judicial impartiality, bringing together a diverse group of stakeholders to discuss ways to increase trust and confidence in the judiciary. One recommendation resulting from participant discussions was to increase the number of years of practice necessary to run for or be appointed to a judgeship. Currently, an attorney must engage 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. For example, trial courts in some states require no specific number of years in practice. A majority of states, however, requires 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.

States with Judicial Elections
Years in Practice Required

State	Supreme Court	Court of Appeals	General Jurisdiction
Alabama	10	10	5
Arkansas	8	8	6
Georgia	7	7	7
Idaho	10	10	10
Illinois	None	None	None
Kentucky	8	8	8
Louisiana	10	10	8
Michigan	5	5	5
Minnesota	None	None	None
Mississippi	5	5	5
Montana	5	5	5
Nevada	15	None	6
New Mexico	10	10	6
North Carolina	None	None	None
North Dakota	None	None	None
Ohio	6	6	6
Oregon	None	None	None
Pennsylvania	None	None	None
Texas	10	10	4
Washington	N/A	5	N/A
West Virginia	10	N/A	5
Wisconsin	5	5	5

Top 15 States by Population Years in Practice Required Prior to Election/Appointment				
Rank	**State**	**Supreme Court**	**Court of Appeals**	**General Jurisdiction**
1.	California	10	10	10
2.	Texas	10	10	4
3.	New York	10	10	5
4.	Florida	10	10	5
5.	Illinois	none	none	none
6.	Pennsylvania	none	none	none
7.	Ohio	6	6	6
8.	Michigan	5	5	5
9.	Georgia	7	7	7
10.	North Carolina	none	none	none
11.	New Jersey	10	10	10
12.	Virginia	5	5	5
13.	Washington	none	5	none
14.	Massachusetts	none	13	10
15.	Indiana	10	10	none

In Ohio, three previous legislative introductions would have implemented longer years-of-practice requirements. The bills sought to maintain the six-year requirement for municipal and county court judges, but raise the requirement for common pleas judges (10 years required), court of appeals judges (12 years required), and Supreme Court justices (15 years required). Those enhancements would have allowed the selection of judges with greater experience, both in the practice of law and in life, and make Ohio a leader in requiring significant legal experience for the bench.

Specifically, House Bill 266 of the 126th General Assembly (2005-2006) would have created a judicial qualification review commission, increased the number of years required in the practice

of law prior to appointment or election, mandated a judicial candidate qualification program, and increased the term length for most judges. The bill's language increased the required years of experience of engaging in the practice of law in Ohio of common pleas judges from six to 10, unless the person served as a judge of a court of record in any jurisdiction of the United States for at least six months. In that scenario, the required number of years of practicing law in Ohio remained at six. The bill also authorized the board of county commissioners of a county in which there is one judge of the court of common pleas, and in which the population is less than 50,000, to adopt a resolution to be submitted to the voters the question of reducing the minimum number of years of engaging in the practice of law from 10, to any number not less than six. Finally, the bill increased the required years of experience in the practice of law in Ohio for judges of the courts of appeals from six to 12, and for Supreme Court justices from six to 15. H.B 266 had four hearings in the House Judiciary Committee, but was never brought to a vote.

S.B. 149 of the 126th General Assembly (2005-2006) was companion legislation to H.B. 266. The provisions of the bills were identical. That bill never had a Senate hearing.

Substitute H.B. 173 of the 127th General Assembly (2007-2008) contained many of the same provisions. The provisions regarding the years-of-practice qualifications were identical to the two previous bills. Sub. H.B. 173 had nine hearings before being voted out of the House Judiciary Committee. The bill did not, however, receive consideration by the full House of Representatives.

Four Left on the Cutting-Room Floor

Over the past year, it became clear after hearing from legislative leaders, partnering organizations, and the public that advocating for all eight proposals of the original Ohio Courts 2013 Plan would not be productive at this time. Therefore, four proposals are being discarded reluctantly, but not permanently. They still present good ideas worth pursuing if conditions change.

Specifically, the following four proposals will not move forward in this Ohio Judicial Reform initiative:

Proposal 4: Eliminate Party Affiliation on the Ballot in Judicial Primaries

Ohio remains the only state in the country to hold partisan primaries and nonpartisan general elections for judicial candidates. The Ohio Courts 2013 Plan asked an essential question regarding this proposal that still deserves an answer, even if the timing may not be right today. Should party affiliation have any bearing on races for an office that requires absolute impartiality?

The 2013 report noted that nonpartisan elections help protect judges from partisan political influences that could compromise the independence of their judgments or create the appearance of such a compromise. [57] It also said nonpartisan elections refocus voter attention away from partisan affiliation and onto the qualification and legal ability of the candidates.

It is worth repeating that more than half of the judges who come to the bench in Ohio are appointed by the governor. Add to that an overwhelming lack of competitive races in judicial elections and the result is that Ohioans essentially – and maybe unwittingly – abandon head-to-head matchups to determine who sits on the bench. Without erasing party affiliation and simply having the two top vote-getters in the primary move on to the general election, Ohioans are likely to continue to see one, and only one, name on the ballot in general elections.

Public comment on the Ohio Courts 2013 website was split down the middle on this proposal. In addition, proposal No. 4 drew the most interest, as well as the most comments of the original eight proposals.

One commenter wrote that "party affiliation has NO PLACE whatsoever in judicial races or elections." Another argued that a democracy requires "complete disclosure of party affiliation." More than one commenter suggested Ohio should make it up its mind and either go "all in" using party affiliation on the primary and general ballots, or remove from both elections.

Proposal 5: Establish a Formal, Non-Partisan System for Recommending Nominees to the Governor to Fill Judicial Vacancies

According to the Ohio Courts 2013 report, 36 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, however, has a very successful local program to fulfill this function.

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. The most recent bill to address this proposal, introduced in June 2007 in the 127th Ohio General Assembly, contained provisions to create a Judicial Appointment Review Commission similar to that used by then-Governor Ted Strickland. The 2013 report cited harsh criticism, which claimed that nominating commissions were simply "back room" deal makers and "secret legal cabals." [58] The same arguments were voiced during deliberations and consideration of

[57] Kathleen Sullivan, "Republican Party of Minnesota v. White: What are the Alternatives?," *Georgetown Journal of Legal Ethics* 21, (2008): 1336.
[58] Rachel Paine Caufield, *Inside Merit Selection: A National Survey of Judicial Nominating Commissioners* (Des Moines: American Judicature Society, 2012), 2, 63-66.

H.B. 173. Infringing upon the governor's authority with a nominating commission may be unpopular with the executive branch.

On the opposite spectrum, the Cleveland Metropolitan Bar Association, in conjunction with both political parties in Cuyahoga County, operates a commission much like a nomination commission by recommending individuals to the governor to fill local judicial vacancies. Both former-Governor Strickland and Governor John Kasich have accepted recommendations from the Judicial Qualification Committee when making appointments to the bench in Cuyahoga County.

Overall, more than twice as many citizen comments favored this proposal than those opposed to it. "Long overdue," one commenter stated. "Candidates who want to run for judicial office need to prove their merit and credentials for such a position."

In an official response to this proposal, the League of Women Voters of Ohio claimed the current method to fill vacancies may reinforce "the notion that judges are politicians" because recommendations from the governor's political party and county chairman are taken into account.

Proposal 6: Require the Advice and Consent of the Ohio Senate for Appointments to the Ohio Supreme Court

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. Five states and one U.S. territory utilize a gubernatorial appointment process with confirmation by the legislature when selecting appellate court judges and for the appointment of appellate court judges to fill vacancies, according to the 2013 report. [59]

Further, appointments to the federal bench in recent years proved 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. [60] 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. The 2013 report

[59] S. Strickland, R. Schauffler, R. LaFountain & K. Holt, eds, "State Court Organization: Table 21 Judicial Selection," *National Center for State Courts* (Last updated March 20, 2014). http://www.ncsc.org/microsites/sco/home#

[60] 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

advocated using this system, but suggested it be limited to vacancies on the Ohio Supreme Court to avoid the potential backlog of vacancy nominations at the trial and intermediate appellate courts. The 2013 report theorized that such a backlog would increase costs to the judicial branch, due to the need to assign visiting judges to cover court dockets until a nominee is confirmed, and would increase administrative inefficiencies in the judicial system.

Over and over in the past year, the negativity associated with the federal appointment system came across loud and clear. Sadly, this widely held viewpoint does not consider that a better mousetrap could be built in Ohio that would result in less delay and confrontation. Twice as many comments viewed this process in a negative light compared to those in favor of establishing a similar system in Ohio.

To that point, one commenter did not hide his or her skepticism of mirroring the federal method. "While this idea may sound helpful in theory, in practice it would increase the politicization of the court due to the fact that the Ohio Legislature, of which the Senate is a part, is gerrymandered to the point where Ohio is no longer a functioning representative Democracy."

Proposal 8: Increase the Length of Ohio Judges' Terms

Another suggested reform of the 2009 Judicial Selection Reform forum conducted by former Chief Justice Moyer, was an increase in the length of judicial terms in Ohio. As outlined in the 2013 report, that forum's 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 terms of county and municipal judges must remain six years without amending the Ohio Constitution.

Under the forum participants' 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. The idea behind this proposal centered on still holding judges directly accountable to the voters, but allowing them to spend more time concentrating on their jobs rather than needing to plan and engage in a reelection campaign as often.

By a nearly 3-to-1 margin, public comment came out in opposition of this proposal. One commenter wrote that the current six-year term already represented "a good compromise between judicial independence and accountability." Another wrote that increasing the terms would actually limit "the ability of voters to make necessary changes as needed."

Conclusion: Leading the Way

Ohio is famously known as the crossroads of the nation, the test market for products, the bellwether, and the perennial presidential swing state. “Where Ohio goes, so goes the nation,” it is often said. 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.

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 by elevating them. Let’s eliminate – or at least mitigate – the name game by giving judicial elections the attention they deserve, moving them all to odd-numbered years and to the top of the ballot, educating voters about the importance of these races and the actual qualifications of the candidates, and increasing the qualifications for serving on the bench. I hope you will join me in supporting these reforms.

References

American Judicature Society. *Judicial Campaigns and Elections: Voters Guide*. Last accessed April 28, 2014. 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.

Cincinnati Enquirer. "Our Plea: Why No Contest?" October 30, 2013.

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.

County Commissioners Association of Ohio. "Bulletin 2011-01: Ohio Census Population for Counties." March 18, 2011. http://www.ccao.org/userfiles/CDE2011-01.pdf.

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.

Delaware County Board of Elections. "Election Results and Voter Turnout History." Accessed April 29, 2014. http://www.co.delaware.oh.us/boe/pastresults.html.

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.

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 28, 2014. 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, Maureen. *A Proposal for Strengthening Judicial Elections*. Columbus: Ohio Supreme Court, 2013.

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

Strickland, S., R. Schauffler, R. LaFountain & K. Holt, eds. "State Court Organization: Table 21 Judicial Selection." *National Center for State Courts*. Last updated March 20, 2014.
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.

Suddes, Thomas. “Ohio Can Shake Up the System; to Help Elect Better Judges.” *Columbus Dispatch*, September 15, 2013.

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.

WBNS 10TV. “Olmsted Falls v. Upper Arlington.” *10TV Westfield Insurance Brain Games*. Aired April 14, 2014. Columbus, OH: WBNS 10TV. http://www.10tv.com/content/sections/video/index.html?video=/videos/Brain_Game/2014/olmsted-falls-v-upper-arlington.xml (20:35)