

## Keep Democracy Alive!

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We just finished a primary election in Pennsylvania with row offices so inconsequential that for some of them there were not any candidates. Yet, there are proposals floating around the General Assembly in Pennsylvania to eliminate the all important position of judge from the annals of democracy and to create a political appointment system in place of elections. How easily politicians try to convince us that we should throw away that right and replace it with smoke filled backrooms.

One proposal in Pennsylvania would generate judicial candidates from three legislatively created regions across the state. The Governor and the General Assembly would choose Commission members from both major parties (what about the minority parties?) and different counties. The membership would be split between lawyers and non-lawyers. The Governor would nominate from a Commission list and Senate confirmation would be needed.

The Commonwealth of Pennsylvania, like many states, and the federal government cannot even agree as to when Daylight Savings Time should begin but now we are going to create a bargaining chip over judges in the Commonwealth. Imagine what a spectacle it will be as to who gets on the Governor's specially appointed Commission. What sort of horse trading will take place to get those powerful king-maker positions? Once the politicians agree on their list, there will be yet another round of deal making in order to get legislative approval.

Why in heaven's name would we throw out a system which is generally working very well, remove accountability currently from the hands of the people and replace that system with another bad patronage system? The answer usually given is that judges in local or state races should not have to raise money in order to get elected. The simple answer to that is assure that the list of donors to all candidates is made public, limit contributions especially from political action groups or publicly finance campaigns. To throw out democracy when it is so badly needed in our country, in favor of a deal between powerful political interests seems very counterintuitive to the will of the people.

Recently in the City of Williamsport, the concept of a powerful City Council and doing away with the Mayor was soundly defeated by the people. If we were not willing to turn over to the legislative branch of city government the executive functions of running the city, why would we ever prevent the people from electing their own judges and replace it with a complex insider game. Anyone who has ever sought an appointed position fully appreciates that it is all about money, contacts, power, and favoritism. No appointment system takes into account the will of the people.

When I teach in high schools, I frequently ask the kids what are the four branches of government. After some discussion and a bit of struggle, we usually get

down to the Executive, the Legislative, and the Judicial. We then talk about the fourth and most powerful branch of government which is the Administrative. Our lives are run by bureaucrats, some of whom are civil service and others who are mere political hacks. The government passes a law and the Executive creates an administrative structure that is so complex that sometimes even the bureaucrats cannot figure out all the intricacies of the system. Ever go into the Social Security office, the Department of Environment Protection or Motor Vehicles and try to get a clear cut answer to a difficult problem?

Election of judges is not perfect. It can be improved. Perhaps for certain positions there ought to be minimal years in practice. For trial judges, it can be argued that there should be a requirement that the candidate has tried a certain number of cases. There are legitimate ways to improve the competency of candidates. The money issue that exists with respect to election of judges is a problem at every level of government. The United States Supreme Court needs to reverse its awful decision in *Citizens United vs. Federal Election Commission*, 558 U.S. 310 (2010), which in essence approved the use of "dark money" from secret sources to finance political campaigns. Transparency and reasonable limitations are a much better way to provide for election of public officials than simply eliminating the democratic system.

Perhaps we should have an appointment system for legislators. Imagine a Citizen's Commission coming up with candidates. The President of the United States would pick the person he wants and the Senate would then have a chance to approve or not. Hey, there's a great way for making sure the President has a cooperative Congress. Let the people have representation selected by the best political wonks. Sound like a dumb idea?

Some very powerful interests in Pennsylvania, many of them affiliated with a particular wing of the political spectrum, are pushing for a system falsely called "merit selection" of judges. There is no "merit" to prohibiting the election of judges in Pennsylvania.

Frequently, we hear that the United States Constitution permits the President to nominate federal judges with Senate confirmation. Whether that system works and how well is a debate for another day. I recall being in the Roosevelt Room of the White House with a group of lawyers who complained that the President of the United States was not sending nominations to the federal bench to the Judiciary Committee of the Senate for an up or down vote. We were told that the President was too busy with Iraq and other problems. The federal judge who led our delegation said: "We know that the President of the United States is very busy, but these federal appointments will outlast his legacy by 40 years in some cases." In other words, the President has enormous patronage potential and he should use it! One could argue until the cows come home as to whether the federal judiciary is better or worse than our state judges, but the fact that the United States Constitution created an appointment system in 1789 is no reason that we should throw out democracy in Pennsylvania today. There is no question that

had the Jacksonian democracy ruled this country at the time that the federal Constitution was adopted, a lot of things would have been different.

The fact that not enough people vote is not a good reason to eliminate democracy. We do need to educate our high school students about the importance of serving their country and voting. Having less democracy is not going to do anything to turn out the citizens at the polls.

In the states where I practice law there are no better judges than those we have here in Pennsylvania. Let us improve the system and the qualifications of those who run for judges rather than flushing our rights down the drain.

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