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Baton Rouge, Louisiana

APPOINTING VERSUS ELECTING OUR JUDGES

I've penned several recent columns about how appointed judges on both the state and federal level often seem to be exempt from basic rules of accountability. That's why in a number of state legislatures throughout the country, as well as in Congress itself, proposals are being offered for more accountability and limiting the terms of judges, who in the case of the federal system have lifetime appointments.

The emails to my website and the responses to the poll run each week reflects strong public opinion demanding more accountability of appointed judges, and even giving consideration to holding elections. After all, most appointed judges receive their job through the "good ole' boy" network. It's not what you know, but who you know and few get these plumb appointments for life without being well "plugged in" to the political system. So those who sanctimoniously talk about the politics involved in electing judges obviously are turning a blind eye to the heavy-handed politics of an appointed system.

I did receive a number of comments about the undue influence of campaign contributions that are accepted by those seeking to step up to the bench and wear black robes. No doubt about it. Campaign contributions pose a great problem for those who want impartiality.

Even if a judge swears not to be swayed by campaign contributions, there is a real perception problem here. Let's face it. Lawyers who practice before elected judges are often the prime source of campaign contributions. And vested interests, who may well have a case pending before an elected judge, often are significant sources for the same campaign contributions.

Most voters in Louisiana as well as throughout the rest of the country want more accountability, and would like to have judicial candidates pass by them for approval on a regular basis. But how do you deal with the conflicts, or the perception of such, when it comes to campaign funds?

Simple. There is an easy way to accomplish this goal. In most jurisdictions, it doesn't even require an act of the legislature. The Supreme Court in Louisiana and most other states could by their own rules require that a judge recuse him or herself from ruling on any case where either the attorney involved on one side or the other, or a party of the case has made campaign contributions to this judge. Prohibit the campaign dollars, and the public gets a much better chance of seeing both impartial decisions rendered, and having a system in place where there is a much better perception that both sides are getting a fair shake.

And there are several ways to have judges elected. Direct elections where any qualified candidate can run (generally for a six year term) is the more traditional way it works in most states. Some states are moving toward the Missouri plan, where once a judge gets on the bench, there is an up or down referendum on his ability to serve. Only if the judge is voted out of office does the position open back up for new candidates.

Whatever plan is put into place, doing away with campaign contributions from those involved in the process can go a long way in restoring the credibility that has been undermined in recent years.

There has been virtually no monitoring or policing of appointed judges on either the federal or state level. Other judges just turn their heads if there are any abuses on the bench and refuse to pass judgment on their peers. This is true even if judges on a higher court are involved. So it is obvious it will take more public scrutiny to see that appointed judges who put themselves in conflicting situations are held more accountable. And you get this scrutiny through some form of the elected process.

If legislators on the state level want to see an immediate improvement in perception of the state judicial system, changing the rules of raising campaign funds will be an important first step. Oh, there will be some hollering from some who sit on the bench. But on balance, it is a solution that merits some review. And it is a lot better system than lifetime appointments where the guys in black robes show a disdain for both scrutiny and accountability.

“We must remember that we have to make judges out of men, and that by being made judges their prejudices are not diminished and their intelligence is not increased.”

- Robert Green Ingersoll

I don't want to know what the law is, I want to know who the judge is.

- Roy Cohn

Peace and justice.

Jim Brown

Jim Brown's weekly column appears each Thursday here at Politicsla.com, and in a number of newspapers throughout the State of Louisiana. You can read Jim's Blog, and take his weekly poll, plus read his columns going back to the fall of 2002 by going to his own website at <http://www.jimbrownla.com>.

P.S.: Visit Jim Brown's website at www.jimbrownla.com.