

Opinion & Commentary

Debunking myths on judicial merit selection

By TIM KIEFER

Earlier this year I ran for the Wisconsin Assembly as a supporter of merit selection reform for the Wisconsin Supreme Court. I didn't win the Democratic primary, but I certainly sparked some debate on judicial merit selection — especially in the pages of the Cap Times.

In a recent column, Cap Times associate editor John Nichols wrote that I want to “end the democratic election of jurists and instead turn the choice over to political insiders.”

But of course that's not what I support, and that's not what judicial merit selection would do. Merit selection is a process by which state Supreme Court justices would be initially selected by a nonpartisan commission and the governor, and then retain their seats by standing for a statewide election. The basic philosophy is this: Select justices based on merit, and then hold the justices accountable in elections based on performance.

Let's take a look at three myths about judicial merit selection and set the record straight.

Myth No. 1: Judicial merit selection would

favor political insiders.

Under merit selection reform, candidates for an open Supreme Court seat would be screened by a nonpartisan judicial selection commission appointed by the governor. Commission members would serve staggered terms, thus ensuring that no governor would be able to pack the commission with his or her political cronies. The commission would recommend a list of finalists to the governor, who would then make the final selection. The governor would be prohibited from selecting anyone other than one of the finalists, thus ensuring that an unqualified political insider would not be able to make an end run around the commission process. These safeguards would ensure the integrity of the process and protect it from being hijacked by an unqualified nominee with political connections.

Myth No. 2: Judicial merit selection would end the democratic election of jurists.

Because merit selection would apply only to the Wisconsin Supreme Court, elections for municipal judges, circuit court judges and state appeals court judges would not be affected by merit selection reform, and

Wisconsin would still have dozens if not hundreds of judicial elections every election year. Under merit selection, Wisconsin Supreme Court justices would face an up-or-down “retain/do not retain” statewide vote following their initial term in office and every term thereafter. Therefore, there would still be regular Supreme Court elections, and Supreme Court justices would still be held accountable by all the voters of Wisconsin.

Myth No. 3: Judicial merit selection would be controlled by lawyers.

One of the most important safeguards of our freedom is the role of non-lawyers in our judicial system. In our system of justice, any criminal case has to be provable beyond a reasonable doubt not to other lawyers, but rather to a jury of one's peers. Judicial merit selection would incorporate the citizen jury philosophy in the selection of Supreme Court justices. Under judicial merit selection, the commission would be required to include both lawyers and non-lawyers. In fact, the Arizona system, the one most commonly cited as a model for Wisconsin, requires that the majority of commission members be non-lawyers.

Judicial merit reform has already been adopted by 24 other states and the District of Columbia. Our sister state of Minnesota is now considering a move to a merit selection system. In fact, Wisconsin's mudslinging Supreme Court elections have spurred Minnesota's own debate over judicial merit reform. The chief justice of the Minnesota Supreme Court, a supporter of merit selection in his state, recently cited Wisconsin's “awful” and “really, really brutal” Supreme Court campaigns as an example of “what we want to avoid here.” When leaders in other states start identifying Wisconsin as an example of what not to do, it's a clear sign that we're on the wrong track.

It's time for Wisconsin to restore confidence in its Supreme Court selection process by joining the two dozen other states that have already adopted judicial merit reform. Regardless of whether I myself win or lose an election, I'll be proud to continue fighting for judicial merit reform.

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