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Governor's Remarks to the Forum on Judicial Selection

Columbus, Ohio – Below are Ohio Governor Ted Strickland's prepared remarks to "A Forum on Judicial Selection: A Time for Action" today.

Forum on Judicial Selection November 20, 2009

I want to thank Chief Justice Moyer, the League of Women Voters and the Ohio State Bar Association for the opportunity to speak today.

It's often said that the law is not the private property of lawyers, nor is justice the exclusive province of judges and juries. Everyone has a stake in a properly functioning, well-respected judiciary in Ohio.

And, everyone here today recognizes that there are no easy remedies to the challenges posed to the independence of Ohio courts by the influences of money and politics in judicial elections. But the wide range of organizations and distinguished individuals participating in this forum provide us with an invaluable perspective on the process.

Americans cherish the notion that our system of justice is free from influence, and that the law is blindly and impartially applied.

While it is crucial that all officials preserve the public's perception of fairness in the way we conduct our actions, judges are rightly held to an even higher standard.

A judge is not one of a hundred legislators who must work together to enact a law. Judges must be prepared to stand alone, to act as the ultimate guarantor of a citizen's rights.

Voters expect legislators and elected executives to advocate for outcomes. But nothing is more damaging to the administration of justice than the public's belief that any portion of a judge's actions has been guided by a preference for a specific outcome.

The materials you received at this conference are filled with the results of polls showing that Ohioans believe that campaign contributions have an impact in judicial decision making.

Other surveys have revealed that 1 in 4 judges are willing to acknowledge that they believe contributions influence judicial decisions.

We must be concerned that over \$20 million in judicial campaign ads have flooded Ohio since 2000. This explosion of money has caused many to worry that the state's judicial system has been hijacked by

special interests or by jurists with political ideologies and political preferences so strong that they cannot set them aside in order to reach a fair and just decision.

Because beyond campaign contributions, politics and partisanship play an equally large role in threatening our confidence in our courts.

The public generally objects to the attempts of special interest groups to impose any issue-oriented “litmus test” upon a nominee for the United States Supreme Court. Yet, the selection and approval of judicial candidates by political parties in Ohio at the primary election stage risks imposing just such litmus tests.

Of course, a judge can care deeply about politics and policy. Still, I believe we should do all that we can to prevent the actual or perceived influence of politics upon a judge in his or her decisions from the bench.

I know that you have heard from others about it, but let me say something about the role I play in the selection of judges in Ohio, and why I implemented a new way to fill vacancies in Ohio’s judiciary.

Now, I am not claiming that that the process I have implemented addresses all of the problems that are the subject of this forum. But this process was designed to work within Ohio’s elective judicial system, creating a new level of transparency and openness.

Under Article IV, Section 13 of the Ohio Constitution, and various provisions of Ohio law, the Governor holds the authority to fill vacant judicial posts in Ohio courts. Although previous Governors have utilized different approaches for judicial appointments, in recent years the general practice was for the Governor to choose an appointee from a list of 3 attorneys submitted by the relevant county political party chair.

By contrast, in January of 2007, I created the Ohio Judicial Appointments Recommendations Panel (OJARP) to assist me in the selection of judges for vacancies in Ohio courts. Each time there is a judicial vacancy in Ohio, 5 At-Large Panel Members from across the state are joined by 6 Regional Panel Members to form a bipartisan group who review applications and interviews applicants before providing me with their three, unranked recommendations for the appointment.

Nearly 250 Ohioans – lawyers and non-lawyers, each representing the great diversity of our state – have served as members of one of the OJARP judicial panels. Attorneys are drawn from all different fields of practice, from firms big and small, private and public. Our panels have also included police officers, firefighters, teachers, doctors, scientists, businessmen and women, stay-at-home parents, community organizers, professors and farmers.

I have instructed the panels to consider all pertinent factors in reviewing and recommending potential appointees, but, in particular, the panels have been asked to evaluate applicants based upon these 3 main criteria:

- the applicant’s background and ability to serve fairly and effectively;
- the applicant’s contribution to bringing diverse perspectives to Ohio’s judiciary; and
- the likelihood that the applicant could and would effectively campaign to retain his or her seat if appointed to the bench.

These standards are published on the OJARP website for all to see.

Over the last two and a half years, OJARP has helped me select 38 judicial appointees from among nearly 300 applicants. Our new judges represent the very best of both Ohio's legal and larger communities.

During my term as Governor, those 38 vacancies occurred on courts as a result of the resignation or death of 32 men and 6 women. My appointments to replace those judges have been 21 men and 17 women.

Of those former judges, 4 were African American. My appointments include 13 African Americans.

One of my recent appointees represents the first Hispanic American to ever serve as an appellate judge in Ohio. I am also proud to have appointed 2 judges who openly identify as members of the GLBT community. And yes, in answer to the inevitable question – I have appointed a Republican.

But I want to emphasize that to me, diversity is about much more than gender, race, ethnicity or sexual orientation. When I established, as one of the criterion to be used by the OJARP panels, “the applicant’s contribution to bringing diverse perspectives to Ohio’s judiciary”, I wanted to make sure that we were bringing people with a wide array of different life and practice experiences to the bench. I have worked to appoint lawyers who have been prosecutors and criminal defense lawyers, plaintiffs’ and business lawyers, litigators and general practitioners.

I believe that the OJARP process has encouraged lawyers to apply for appointment to the bench who would never have considered seeking an appointment in years gone by. I believe my appointees have reflected the great diversity of the bar and of Ohio. And I believe the bench is better for that increased diversity.

Moreover, I think the electoral success of our appointees to date demonstrates that they have proven their skill and ability on the bench. For example, in the elections of 2007 and 2008, over 82% of the judges I appointed won election to full or unexpired terms, with many running unopposed or winning easily.

Let me say that some see the focus on an applicant’s ability to win election as a weakness in the process. But I think that is important and appropriate. Because if an attorney is deserving of appointment, and reflects those qualities that I believe make for a good judge, I certainly want to ensure continuity on the bench that will result from the judge’s retention in the next election.

Remember - before an application comes to my desk for consideration, it has been independently evaluated and recommended by the OJARP Panel. Neither I, nor any member of my staff, have ever attempted to control or influence any panel’s vote. If a politically-connected applicant doesn’t make the cut, they don’t move forward in the process. For every single vacancy I have chosen an appointee from the three unranked names given to me by the Panel. Because my goal is to appoint an experienced, skilled, and involved judge who can also successfully manage the political reality of Ohio judicial elections.

Let me turn from results to process. Your agenda includes a discussion of the potential structure of judicial nominating commissions. Your materials include the publication Promoting Merit, which lists several “best practices” to ensure fairness, effectiveness and independence in a merit-based judicial selection process. Much of the focus is placed on nominating commission’s openness, transparency, accessibility and opportunity for public participation.

I believe OJARP meets all of these goals. My judicial appointment process lets Ohioans know who is being considered for a vacant judicial position, how the applicants are reviewed, and who is making recommendations. This open process helps to increase confidence not only in the appointed judge, but in the justice to be dispensed in that courtroom.

Again, I don't offer OJARP as a partial or whole remedy for Ohio's current elective judicial system. And, as I mentioned previously, I don't believe that any easy solution exists for the issues addressed by this forum. No consensus exists that any one judicial selection system is inherently better than another. Popular election of judges preserves the direct input of citizens in their government, but invites the outside involvement of parties interested in particular results. The so-called "merit selection" plan that ties appointment to retention elections has not proven to be immune from politics, and risks exclusion of non-traditional applicants. Purely appointive systems – even the federal model – do not exclude politics, and can lead to charges of a judicial "elite."

You know, in the words of the age-old proverb, "Corn can't expect justice from a court composed of chickens." Indeed, justice and the belief in justice require a court of the highest integrity, a court system that permits neither bias nor the appearance of bias.

I thank you for your pursuit of a strong and fair judicial system, and for the opportunity to visit with you today. Because as with all hard problems facing our state, we must not throw up our hands and concede defeat, but rather – as encouraged by this forum – continue the conversation, study the options, and relentlessly pursue the betterment of our Ohio community.