

## ***Judicial Fairness and Impartiality and the League of Women Voters in the News***

**Moyer: End election of Ohio justices: But Supreme Court colleagues think system is just fine -- [Joe Hallett and James Nash, THE COLUMBUS DISPATCH, 3/3/10](#).** COLUMBUS -- Entering the homestretch of his 24-year run as Ohio's top jurist, retiring Chief Justice Thomas J. Moyer wants to crown his legacy by changing the way justices get their jobs on the Ohio Supreme Court.

But Moyer's plan to ask voters to replace the current system of popularly electing the seven justices with one in which they would be appointed by the governor has been wounded by friendly fire.

Led by Justice Evelyn Lundberg Stratton, at least three of the court's justices favor keeping the elective system.

"I just think that people are smart enough and there's enough information out there for them to make those judgments about who should serve on the court," Stratton told The Dispatch.

Stratton made her case in a 19-page analysis she sent to Moyer and the other justices last week. She said a majority of her colleagues support her position.

Justice Paul E. Pfeifer, who has the most seniority behind Moyer, declared the chief justice's idea dead.

"I will tell you this idea is going nowhere," said Pfeifer, who declined to disclose his own views in the absence of a written proposal. "Consequently, I'm not sure why (Moyer) even wants to bring it up at this point."

Justice Judith Lanzinger, who is running for re-election, and Justice Maureen O'Connor, who is running for Moyer's job, expressed support for keeping the current system of electing justices. Justices Terrence O'Donnell and Robert R. Cupp could not be reached.

"No method for judicial selection is ideal and without problems," O'Connor said. "I believe that we should work with the elective system and concentrate on educating the public about the qualifications, records and philosophies of each candidate. The public can then decide who deserves their vote, trust and confidence."

Moyer said his colleagues' opposition to "merit selection" is neither surprising nor fatal to the plan. "I think it's difficult to find across the country a sitting justice of a Supreme Court who has gotten there by the elective system who says they don't like it."

At a conference in November, Moyer and leaders of groups such as the Ohio State Bar Association and the **League of Women Voters of Ohio** supported a plan to ask voters to

amend the constitution, possibly in 2011, to supplant direct election of justices with an appointive process.

Under the system, the governor would fill vacancies on the court by choosing among three candidates who are recommended by a bipartisan panel of lawyers and laypeople. A justice would serve two years and then stand in a retention election with no opponent. Retention elections would be held at regular intervals after that.

Moyer and other proponents of merit selection say Ohio's proposal would contain elements of such a plan, but they haven't released a specific outline.

Moyer and others argue that citizens' confidence in the court's **impartiality** has been eroded by big money spent by special interests in judicial races, leading to a perception that justices can be bought. Winners in Supreme Court elections routinely raise and spend \$1 million or more, and outside groups spend hundreds of thousands of dollars in independent efforts to influence judicial campaigns.

Moyer said public-opinion surveys consistently show that 75 percent of respondents believe that campaign contributions influence judges' votes on cases. "Even four out of 10 judges say that," he said. "With that staring you in the face, the other arguments for an elective system just wash away."

With advocacy groups lining up behind Moyer's proposal, Stratton said she felt compelled "to lay out the arguments in favor of judicial elections." She called Supreme Court elections "open and transparent," noting that candidates are subjected to questioning by the news media and other groups and must disclose their sources of funding.

"The appointive system gives the pick to one person, the governor," Stratton said.

Of the 41 judges Strickland, a Democrat, has appointed to vacancies through February, only one is a Republican, she said.

"The governor will almost always pick a judge from his or her political party who shares the same political ideology."

Moyer and Meg G. Flack, president of the **League of Women Voters of Ohio**, said they will continue working with others on a merit-selection plan to take to voters.

"We hope by educating folks, even those who are opposed at this time, we might get them to see the advantages of reforming the system," Flack said.

**Participation High in NC Public-Finance Program** -- [\*Peter Hardin, GAVEL GRAB, 4/21/10\*](#). North Carolina became the first state, in 2002, to provide full public financing for judicial campaigns. This year, all 12 candidates in state judicial elections

have stated their intention to participate in the public financing program, according to an article in Mountain Xpress, based in Asheville, N.C.

Kathleen Balogh, president of [the League of Women Voters](#) of North Carolina, lauded North Carolina's 2002 Judicial Campaign Reform Act and said the law has inspired other states. West Virginia recently adopted a public financing pilot plan for state Supreme Court elections, following on the heels of North Carolina, New Mexico and Wisconsin.

**States Weigh Judicial Recusals: Some Judges, Businesses Oppose Restrictions on Cases Involving Campaign Contributors -- [Nathan Koppel, THE WALL STREET JOURNAL, 1/26/10](#).** More states are responding to a longstanding concern that elected judges risk the appearance of bias when they hear cases involving their campaign contributors. But recent examples from Wisconsin and Nevada show that some states are reluctant to force judges to disqualify themselves from cases solely because they have received large contributions.

The U.S. Supreme Court last year prompted states to tackle the issue of potential bias after it held in a case involving Justice Brent Benjamin of West Virginia that judges may need to recuse themselves when parties that have spent substantial sums to help elect the judges appear before them. The court, in a landmark opinion Thursday, eliminated limits on campaign spending by corporations.

About 10 states, including California and Texas, have proposed new judicial-disqualification rules in the wake of last year's Supreme Court ruling. But overhaul efforts have met resistance from judges and businesses who oppose restraints on judges' ability to raise campaign funds and on voters' rights to financially support favored candidates. Critics say an array of people would be less likely to donate to campaigns should these types of laws be put on the books.

"States are looking at recusal more seriously, but most are not yet creating more rigorous recusal practices," says Charles Geyh, a law professor at Indiana University who specializes in judicial-ethics issues.

Last Thursday, Wisconsin rebuffed calls for recusal when contributions exceed a certain amount. The state's Supreme Court amended the state's Code of Judicial Conduct to specify that judges were not required to step aside in cases based solely on the fact that they have received lawful campaign contributions or expenditures from parties involved in the case. The court rejected competing proposals that would have required disqualification if judges had received contributions of \$1,000 or \$10,000 from parties.

In written comments supporting the state's new disqualification standards, Supreme Court Justice David Prosser Jr. said it would be improper to "deprive citizens who lawfully contribute to judicial campaigns...of access to the judges they help elect." In an interview, he added: "I think the national recusal movement is an effort to so gum up [judicial] elections that we are almost forced into an alternative, such as appointing judges." At the state level, judges are chosen by election or appointment.

Andrea Kaminski, executive director of the [League of Women Voters](#) of Wisconsin, says the state court's decision not to require recusals will "further erode the public's confidence in the courts." As it stands, she says, "contributions are not automatically grounds for recusal, no matter how much is spent."

The Nevada Code of Judicial Conduct was amended Jan. 19 by the court to require judges to disqualify themselves whenever their "[impartiality](#) might reasonably be questioned." The Nevada Supreme Court rejected two alternate proposals: A judge would have to recuse himself when he gets campaign support of \$50,000, or when he . Yet another proposal rejected by the court would have required receiving 5% or more of his total campaign funding from a party or law firm in a case.

"Those [alternate] rules would have created clarity and greater public confidence in courts," says Jeffrey Stempel, a professor at the William S. Boyd School of Law in Las Vegas who served on a commission charged with recommending changes to the state's code of judicial conduct. The Nevada Supreme Court, Mr. Stempel says, "missed an opportunity to strike a blow for judicial [impartiality](#)." The Nevada Supreme Court did not return a call for comment.

Legislators in Texas and Montana last year proposed bright-line monetary triggers for recusal, but the proposed measures did not pass.

The Michigan Supreme Court, meanwhile, last year adopted stricter recusal standards than it had earlier, including a rule that a supreme court justice's decision denying a motion to step aside in a case may be reviewed by other justices on the court.

Last Thursday's landmark opinion heightens the need for strict disqualification rules, says J. Adam Skaggs, an attorney with the Brennan Center for Justice at New York University School of Law, which is in favor of the public financing of judicial candidates. The ruling "will only exacerbate the trend of escalating, arms-race spending in judicial elections as corporations, unions and special interests seek to buy control of the bench," he says.

"If you are going to elect judges, you can't cut off their speech rights," counters Bradley Smith, chairman of the Center for Competitive Politics, which opposes campaign-spending limits. "The ability to raise money and get your message out is an element of speech."

**Justice by call: Debate wrestles with selecting judges by election or appointment** -- [Brad Bauer, MARIETTA TIMES, 1/18/10](#). WASHINGTON COUNTY -- An age-old debate over whether state supreme court judges should be elected or appointed is regaining attention as some state justices, the American Bar Association and the [Ohio League of Women Voters](#) are making a push this year for a change.

The effort to abolish elected judges is part of a nationwide push by many in the legal system, although not all interested parties are buying into the argument, including many local attorneys and judges.

Proponents of the change claim the legal system is currently tainted by judges who seek campaign donations. They hope to develop a system in which judges are appointed and later put up for a "retention" election, where voters would decide every so often whether or not to keep the judge in office.

Washington County Common Pleas Judge Ed Lane said he feels any change is unnecessary because the U.S. Supreme Court has addressed the issue of campaign contributions. The Supreme Court ruling was fueled by a West Virginia case in which a state Supreme Court justice ruled on a dispute that affected a company whose chief executive spent \$3 million to help get the judge elected.

"The Supreme Court perfectly addressed this issue," Lane said. "They said if you make a contribution to a judge, that judge cannot hear any case you have an interest in. That really takes away the incentive in trying to influence judges by contributing to their campaigns, which I think is the exact, correct decision."

Lane said stripping the public of the right to decide an officeholder is another major concern of his. The current proposal would only apply to state supreme court justices, and not common pleas or municipal court judges.

"Regardless, I'm 100 percent for people retaining their right to elect their officials," he said.

Caroline Putnam, a member of the Washington County [League of Women Voters](#), said despite the multimillion campaigns, few people know much about state Supreme Court candidates.

"I believe the thinking is that this would also help to ensure the best candidates are looked at for appointment," she said. "And the public would still have a voice through the retention process."

According to the Associated Press, the plan currently being reviewed would call for state commissions made up mostly of non-lawyers to pick judges. Governors would appoint judges the commissions select, and voters would decide in future elections whether the judges keep their jobs.

Marietta City Law Director Roland Riggs III said "the devil is in the details" of the plan.

"There are pros and cons to both sides of this, but I would really like to know more about how this would work," he said. "Before I say I'm in favor of appointments or retention, I have to say I'm in favor of just letting people get to vote."

Washington County Public Defender Ray Smith said he also prefers the current election practice, although he noted some possible benefits to appointment.

"I definitely think there are situations where the best person for the job doesn't get the job," Smith said. "I like letting the people decide. That way, if there's a judge who is doing a terrible job they can get rid of him."

Smith said although the public may get a chance to vote out a judge with a retention vote, there is a good chance the same individuals who appointed the last judge could get to appoint the next judge.

Beverly resident Debbie Heiss, 41, said she has questions about when retention elections would be held.

"Would it coincide with presidential elections, so there would be good voter turnout?" she asked. "A concern I would have is not having a lot of voters turn out and having a judge in there not doing the job we want."

Heiss also expressed concern about campaign contributions to judges.

"That is something that needs addressed," she said.

**Citizens United, Corporate Personhood and the Constitution: CAC Releases Discussion Draft of New Report in Advance of Major Supreme Court Ruling -- [David Gans, CAC TEXT & HISTORY, 12/3/09](#).** WASHINGTON DC -- As we await the Supreme Court's decision in *Citizens United v. Federal Election Commission*, expected any day now, Constitutional Accountability Center (CAC) has continued to build on the scholarly research discussed in our brief filed with the Court: whether corporations have the same rights as individuals, particularly when it comes to influencing electoral politics in this country.

The result of this work is this discussion draft, tentatively titled "***A Capitalist Joker: Corporations, Corporate Personhood, and the Constitution***", which we intend to release more formally in January as the latest installment in our Text & History Narrative Series. The text of our Constitution never mentions corporations and, as our narrative explains, this was deliberate: the framers wrote and the American people ratified the original Constitution, the Bill of Rights, and the three Civil War amendments -- the Thirteenth, Fourteenth, and Fifteenth -- to secure the inalienable rights of "We the People" -- living human beings. Governments create corporations and give them special privileges to fuel economic growth, but with these special privileges come greater government oversight. Indeed, in the early 20th Century, the American people added the Sixteenth and Seventeenth Amendments to the Constitution, at least in part, to ensure greater governmental control over corporations and less corporate influence over our democracy.

The narrative traces the Supreme Court's treatment of corporations from the Founding era Court under John Marshall, through the *Lochner* era, the New Deal, and up through the Roberts Court today. The narrative shows that while corporations have long enjoyed some protections under certain constitutional provisions, they have only been granted

equal constitutional rights once – in a series of opinions in the infamous *Lochner* era. Today, those opinions have been repudiated by liberals and conservatives alike and have been dismissed by the Supreme Court as a “relic of a bygone era.”

Citizens United and its supporters are portraying their case as a fight over the meaning of the First Amendment, but this obscures the far more fundamental question that underlies their claim. In arguing that there is no difference between corporate speech and the political speech of We the People, Citizens United seeks a radical constitutional result -- one that the framers of the Constitution and the successive generations of Americans who have amended the Constitution and fought for laws that limit the undue influence of corporate power would find both foreign and subversive.

Given the Court’s forthcoming decision in *Citizens United*, we are posting the narrative as a discussion draft now on a number of legal blogs, with the hope of better informing the discussion of the case. We enthusiastically welcome your thoughts – criticisms, oversights, suggestions, and more – . . . (Click here to go to site.)

*David H. Gans is Director of the Human Rights, Civil Rights, and Citizenship Program at the Constitutional Accountability Center (CAC). He is lead author of the discussion draft posted above, and co-author of the brief CAC filed, along with the [League of Women Voters](#), in Citizens United v. Federal Election Commission.*

**O'Connor leads push against judicial elections -- [Chris Rizo, LEGAL NEWSLINE, 12/11/09](#).** DENVER -- Former U.S. Supreme Court Justice Sandra Day O'Connor is leading the push against the election of judges, saying the process taints jurists who depend on political contributions to keep their places on the bench.

O'Connor, a vocal critic of judicial elections, is teaming with a think tank at the University of Denver, the Institute for the Advancement of the American Legal System, to bring public attention to the issue in the 33 states that elect jurists.

Rather than having judges run for office in much the same way politicians do, O'Connor has said she supports the idea of state commissions of mostly of non-lawyers picking nominees for governors to appoint to the bench.

"A voter goes into the voting booth on Election Day, and they have a long list of races to vote for," O'Connor was quoted by The Associated Press as saying. "When they come to the judges, they don't typically know any of them. How are they supposed to decide?"

O'Connor was the first female member of the U.S. Supreme Court. She served as an Associate Justice from 1981 until her retirement from the high court in 2006. She was appointed by Republican President Ronald Reagan in 1981. Prior to her appointment to the court, O'Connor was an elected judge in Arizona.

The Institute for the Advancement of the American Legal System was founded in 2006 by former Colorado Supreme Court Justice Rebecca Love Kourlis. She will direct the

new project, while O'Connor will chair the 11-member advisory committee overseeing the effort, officials said Thursday.

"Thirty-three states elect some portion of their judges, a process that has too often degenerated into a spectacle featuring multimillion dollar campaigns and attack ads," the institute said on its Web site.

The push by O'Connor and others comes as Nevada considers whether to adopt a constitutional amendment to jettison judicial elections and replace them with merit-based selection.

The project's advisory committee, in addition to O'Connor and Kourlis, includes: Texas Chief Justice Wallace Jefferson, Ohio Chief Justice Thomas Moyer, former Arizona Chief Justice Ruth McGregor, former American Bar Association President H. Thomas Wells, [League of Women Voters](#) President Mary Wilson, and Meryl Chertoff, director of the Sandra Day O'Connor Project on the State of the Judiciary at Georgetown Law.

Corporate members of the panel include Diane Gates Wallach of Cody Resources, liaison to the institute's board; Ramona Romero, corporate counsel, logistics and energy, at DuPont and Larry Thompson of PepsiCo.

**Editorial: Worth another look: Growing tab for judicial elections invites study of other approaches -- [THE COLUMBUS DISPATCH, 12/6/09](#).**

COLUMBUS -- The Dispatch long has opposed plans for merit selection of judges, which would take away from voters the right to choose who occupies the bench, handing that power over to a small elite. But Ohio Chief Justice Thomas J. Moyer's concern about the growing sums of money required to run statewide judicial campaigns is worthy of analysis by the legislature.

Moyer's proposal to introduce merit selection, which would have to be approved by voters as a constitutional amendment, involves only the Ohio Supreme Court. A nominating committee of lawyers and judges would evaluate Supreme Court candidates who meet certain minimum standards and turn over a list of three finalists to the governor, who would choose one. Once a justice is appointed, he or she would stand unopposed for a retention election after two years. A term of 12 years has been suggested, instead of the current six-year term.

The Ohio State Bar Association and the [League of Women Voters](#) support this change.

Two arguments can be made against merit selection: One, this country gives voters credit for being smart enough to pick their leaders, from the U.S. president all the way down to their local school boards. Voters in Ohio even choose people for positions that require specialized knowledge, including county coroner and engineer and city attorney. So what makes the voters so eminently unqualified to choose their jurists?

And two, merit means vastly different things to different people. Wherever power is at stake, politics are involved. Merit selection would be just as political as elections, but with far fewer players calling the shots.

The last time merit selection was on the ballot, 1987, Ohio voters rejected it nearly 2-to-1.

But because Ohio lawmakers will be asked to evaluate this proposed amendment for the ballot, they ought to take this opportunity to evaluate other states' experiences with merit selection and Moyer's underlying concerns about campaign funding. And if the evidence points to a problem, even if merit selection isn't the remedy, the legislature might be able to make improvements in the way campaigns are financed.

No one can deny that the judicial-election climate has changed since voters shot down the idea 22 years ago. The money now required to run a statewide judicial campaign is astounding.

The nonpartisan watchdog group Justice at Stake reports that for the years 2000-2008, Ohio state Supreme Court races raised \$21.2 million, the second-highest total in the country. Alabama, came in first at \$40.9 million.

That doesn't include the big bucks that independent interest groups shell out to discredit statewide judicial candidates. It's hard to forget the infamous Lady Justice TV ads in 2000 against Justice Alice Robie Resnick, funded by an arm of the Ohio Chamber of Commerce. Resnick triumphed in spite of the ads, but Moyer sees that as the point at which many people saw a problem.

Money, in reality, might not be influencing decisions. Companies and individuals don't tend to use donations to buy off someone who ordinarily would disagree with their viewpoints. Instead, money is their freedom of speech: They support candidates who already share their worldviews and beliefs.

Plus, what typically isn't reported in analyses of cases won and lost by major campaign donors is how many cases the Supreme Court has declined to hear involving those parties.

But the perception of bought-and-paid-for justice is hard to shake.

Confidence in a fair and rational legal system is imperative for a state's economic well-being. A closer look at the system by the General Assembly wouldn't hurt.

**Idea of choosing Ohio Supreme Court justices by committee will be a tough sell -- Thomas Suddes -- [Thomas Suddes, THE COLUMBUS DISPATCH, 11/29/09](#).** COLUMBUS -- Ohio Supreme Court Chief Justice Thomas J. Moyer faces mandatory retirement in 13 months. But Moyer, unlike the lazybones in the legislature,

doesn't take it easy: The genial Columbus Republican, chief justice for 23 years, wants to re-do how Ohio elects its highest court.

The "appointive-elective" set-up Moyer wants does *not* -- formally -- end Ohio voters' right to elect the seven-judge Supreme Court. But it would reduce voters' choices. So the concept wins no applause in this corner. But it's a good-faith plan, and it deserves fair consideration.

Moyer, the **League of Women Voters of Ohio** and the Ohio State Bar Association will firm up the specifics in 2010. But what they'll ask voters for will be something close to this:

When a Supreme Court vacancy opens, the governor would pick a justice from a list cleared by a screening or nominating commission. After the justice served a couple of years, he or she would face Ohio voters -- not a challenger.

Voters would decide, in a statewide election, whether to "retain" that justice. If voters say yes, the retained justice would periodically face more retention elections. If voters said no to retention, that justice would leave the court, to be replaced by someone else picked from commission lists.

Moyer and allies want to end donnybrook one-on-one elections that call into question winners' **impartiality**. That's a worthy goal. But there are hurdles:

- In 1938 and 1987, Ohio voters trounced merit-selection plans for judges.
- Both times, advocates for merit selection got on the ballot through labor-intensive petition drives -- not via the General Assembly; the same would likely happen in 2010.
- Picking appointees by "merit" isn't a science. Since 1983, governors have appointed the Public Utilities Commission of Ohio from a screened list. Case closed.
- Foes of an "appointive-elective" Supreme Court will surely argue that it would "take away your right to vote." In 2010 in Ohio, that could be a killer argument.

The 1938 merit-selection plan drew only a 33.4 percent yes vote; it didn't carry a single county. The 1987 plan drew a 35.4 percent yes vote, carrying eight counties: Montgomery (Dayton), Lucas (Toledo), Allen (Lima), Belmont (St. Clairsville), Fulton (Wauseon), Greene (Xenia), Shelby (Sidney) and Wood (Bowling Green).

Bottom line: Moyer doesn't aim to spend his final year as chief in a La-Z-Boy.

Sen. Dale Miller, a Cleveland Democrat, e-mailed about last week's column, which revealed a sweet federal tax break some General Assembly members can claim. According to Miller, the tax break can cut a legislator's federal income tax, but not, contrary to the column, his or her Ohio income tax.

The income tax Ohioans pay Columbus is based on the adjusted gross income on a taxpayer's federal form, Miller said. The AGI is the amount of income reported before federal deductions. So, because the Ohio tax is based on federal AGI, the Internal Revenue Code section 162 (h) tax break for state legislators "has no impact whatsoever" on a legislator's state tax, Miller said.

As for a federal benefit, that's limited by the Alternative Minimum Tax, which "increases my federal income tax liability significantly in most years," Miller wrote.

That aside, he said, "the benefit of section 162 (h) on federal tax liability for legislators is very significant." Readers might ask their state legislators *how* significant.

**Governor's Remarks to the Forum on Judicial Selection -- [Office of the Governor of Ohio Ted Strickland, 11/20/09](#).** COLUMBUS - Below are Ohio Governor Ted Strickland's prepared remarks to "A Forum on Judicial Selection: A Time for Action" today.

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.

### **Chief Justice, State Bar Association, League of Women Voters Will Pursue Appointive-Elective System -- [JudicialSelection.net](http://JudicialSelection.net), 11/21/09.**

COLUMBUS --The conveners of a two-day state conference that concluded today announced that they will work to build a coalition to support amending the Ohio Constitution to replace the current system of statewide elections of Supreme Court Justices with a new system where Justices are appointed and then stand for a retention election.

“A Forum on Judicial Selection: A Time for Action” was held Nov. 19 and 20 at the Ohio Judicial Center and the Center of Science and Industry (COSI) in Columbus. The conveners of the event are Ohio Chief Justice Thomas J. Moyer, the Ohio State Bar Association, and the League of Women Voters of Ohio Education Fund. The forum is made possible by a grant from the Joyce Foundation.

Based on the input from a broad spectrum of stakeholders, experts and interested parties that change is needed, the conveners concluded that there is support for some form of an appointive-retention system.

“Early next year we will propose a specific plan that we will take back to the partner organizations for formal consideration,” said Chief Justice Moyer. The conveners said that while the specifics of the plan will take time to develop, based on what they heard at the forum any plan will have the following characteristics:

- The appointment process will be open and transparent.
- Any nominating commission will be representative of the diversity of Ohio’s population and will include multiple appointing authorities.
- Some form of a public education component will be included.
- Retention elections will ensure that voters still have a voice.

“These two days were an important first step toward addressing the public’s concern about the influence of campaign contributions on judicial decision making,” said OSBA President Barbara J. Howard.

“The elements discussed today of an appointive-elective system will go a long way toward making the process more transparent and open,” said Meg Flack, president of the **League of Women Voters of Ohio Education Fund.**

“What we learned these two days is that we can do better in Ohio,” said Chief Justice Moyer. “In the coming weeks, we will be preparing a report that will offer a specific

recommendation for reforming the process for selecting Supreme Court Justices,” Moyer said.

**Blog: Chief Justice Moyer, allies promise campaign to change selection of Supreme Court justices -- [William Hershey, DAYTON DAILY NEWS, 11/20/09](#).** COLUMBUS -- Ohio Supreme Court Chief Justice Thomas J. Moyer, the Ohio State Bar Association and the **Ohio League of Women Voters** want to change the way state Supreme Court justices are selected.

On Friday, Nov. 20, they announced that they will work to build a coalition to support a constitutional amendment to replace statewide **elections of the justices** with a new system where **justices are appointed** and stand for a **retention election**.

“Early next year we will propose a specific plan that we will take back to the partner organizations for formal consideration,” Moyer said in a press release.

The announcement came at the end of a two-day conference in Columbus, “A Forum on Judicial Selection: A Time for Action.”

“What we have learned these two days is that we can do better in Ohio,” Moyer said.

Moyer has said the current system needs to be replaced to remove the perception that campaign contributions influence judicial decisions.

**Chief justice in pursuit: Thomas Moyer launches another worthy bid for merit selection -- [Editorial, Akron Beacon Journal, 11/20/09](#).** COLUMBUS -- Nearing his final year on the Ohio Supreme Court, Thomas Moyer renewed this week his push to change **how the state selects its judges** and thus advance public confidence in the judicial branch. The chief justice's timing is good. Memories of the 2000 campaign that targeted then Justice Alice Robie Resnick (and made Ohio the poster child for judicial reform) are still fresh. This summer, the U.S. Supreme Court ordered the chief justice of the West Virginia Supreme Court to step aside from a case affecting the largest contributor to his campaign.

Getting money out of the election process won't be easy. Ohio voters rejected **merit selection**, common in other states, in 1987. The political parties typically show little interest, preferring to keep their grip on power and patronage. To counter these trends, Moyer has joined with the Ohio State Bar Association and **the League of Women Voters of Ohio Education Fund** to rally support for two reforms applied to the Ohio Supreme Court.

The first preference is **merit selection** of the court's seven justices. Moyer has favored a plan under which the governor would appoint justices from a list of candidates issued by an independent panel. After a period of one or two years, a retention election would be held, voters deciding whether to keep a justice for the rest of a 10-year or 12-year term,

instead of the current six-year term. The fallback position is the adoption of public funding for Ohio Supreme Court campaigns.

Ideally, merit selection with retention elections would be extended to all levels of the judicial branch in Ohio. As it is, many judges first land on the bench through an appointment by the governor, filling a vacancy created by a retirement or resignation. Otherwise, judicial contests often turn on "the name game," the political parties backing candidates with proven name recognition.

Moyer correctly concludes that expensive campaigns for judicial office, complete with large donors, third-party expenditures and sometimes brutal televised attack ads, inevitably erode the public's perception of the system's ability to deliver **impartial** results. Once again, the chief justice has proposed fair and practical solutions. The legislature should act, preferably by giving voters another say on merit selection, before more harm comes to the court.

**Chief justice suggests end to elections -- [James Nash, THE COLUMBUS DISPATCH, November 21, 2009](#).** COLUMBUS -- Ohio's top judge and others plan to go to the ballot with a proposal to replace competitive elections to the state Supreme Court with a system in which the governor fills vacancies on the bench.

Chief Justice Thomas J. Moyer and other backers of the "**merit selection**" system say it would **reduce the role of money in races for the seven-member Supreme Court**. Successful candidates for the court typically spend \$1 million or more.

Moyer, along with Barbara J. Howard, president of the Ohio State Bar Association, and Meg G. Flack, president of the **League of Women Voters of Ohio**, said yesterday that hopes for reform were boosted by a two-day conference of more than 50 political, legal, business and civic leaders who discussed the idea.

They said 78 percent of conference participants endorsed putting the idea on the ballot.

"We are pleased with that high a percentage," Moyer said yesterday.

Supporters can put the issue before voters in two ways: by getting three-fifths of lawmakers in the House and Senate to place it on the ballot, or by collecting more than 400,000 signatures from registered voters. Moyer said he hopes lawmakers will take up the cause. Nothing will appear on the ballot until at least 2011, he said.

The governor would fill vacancies on the court by choosing justices from among three who are recommended by a bipartisan panel of lawyers and laypeople. The justice would serve two years and then stand in a retention election with no opponent. **Retention elections** would be held at regular intervals after that.

Supporters say the idea would remove most of the money and partisan politics from the process of seating the state's top court. They also suggest that merit selection later could be extended to lower courts.

"Voters expect legislators and elected executives to advocate for outcomes," Gov. Ted Strickland said at the conference yesterday. "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."

Merit selection has some critics. Madison County Common Pleas Judge Robert D. Nichols noted that Ohioans rejected the idea by overwhelming margins in 1938 and 1987.

"Voters concluded then that merit selection represented an elitist usurpation of their fundamental right to vote for judges," Nichols wrote in a letter he plans to distribute across the state. "Merit selection in 2010 will raise the same specter."

**Editorial: There's a better way to pick judges --** [\*Dayton Daily News, November 16, 2009\*](#). COLUMBUS -- If you ever think about judges, it's probably at election time when you're asked to vote for some. Or maybe if you go to court for a ticket or are called for jury duty. There are, however, some people who are thinking about them a lot these days — and specifically about how Ohio chooses its seven-member Supreme Court.

Chief Justice Tom Moyer, the **Ohio League of Women Voters** and the Ohio State Bar Association believe there has to be a better way to choose the people who decide what the state constitution and Ohio's laws really mean.

(This court's role is important, to name a few for instances, in fights about how to fund schools; whether jury awards for damages can be limited; and, to cite a recent example, whether thousands of slot machines can be put at race tracks.)

Chief Justice Moyer, the bar association and the League are having a conference Nov. 19 and Nov. 20, and the headliner is former Justice Sandra Day O'Connor.

She opposes the practice of judges raising goo-gobs of money, then deciding cases that cost, save or beget the interest groups that funded their campaigns tons of money.

Ohio has been down this path before, in 1987. Voters overwhelmingly rejected a "merit selection" plan for choosing judges. The political parties were against the idea, as were plenty of interest groups.

Voters, the thinking goes, didn't want anyone taking away their right to choose judges, even though they readily confess they frequently don't know much about these candidates.

Proponents think opposition may have lessened in the intervening two decades. Because supreme court contests have become so expensive, the interest groups are getting tired of shelling out money to elect “their” people.

The bar association’s research shows that, during the five occasions since 2000 that Supreme Court races were on the ballot, Ohioans have been pelted by more than \$20 million in television ads.

That makes us possibly the most insulted people in the country. The ads are often annoyingly overdone and under truthful.

The conference organizers are offering up two approaches: **public financing of judicial elections** or an **appointive process** that requires justices to run to keep their seat after they’ve served a number of years.

Either option would substantially reduce the role of money.

Americans like to think of their court system as having integrity. Even though plenty of people who go to court come away disappointed (somebody has to lose), the widespread perception is that judges and juries do a pretty good job at sorting out people’s disagreements.

However, when money plays such a powerful role in the election of very low-profile people who have the final word on so many issues, public confidence is at risk.

The reformers want to capture the moment, not blow it.

So they’re committed to working with interest groups and the politicians to craft something good and salable.

Then they say there will have to be an aggressive public education campaign to assure voters that supporting a change would improve a tarnished system.

Let the work and the education both begin.

**Editorial: Ohio Chief Justice Thomas Moyer burnishes his legacy by pushing for changes in how the state selects its top judges -- [PLAIN DEALER, 11/18/09](#).** COLUMBUS -- As he nears retirement, Ohio Chief Justice Thomas Moyer continues to look for ways to **improve the state's judiciary** -- and public respect for those who comprise it.

To that end, he has joined forces with the Ohio State Bar Association and the **League of Women Voters of Ohio Education Fund** to organize a seminar on **judicial reform** Thursday and Friday in Columbus. They have invited leaders from both parties and key interest groups to hear from judges and legal scholars from other states who will lead discussion on two ideas:

Should Ohio stop electing its seven Supreme Court justices and move to a system of **merit selection** by the governor followed by **retention elections**? Or should it introduce **public financing for Supreme Court elections**?

Moyer, a Republican who is 70 and thus unable to seek re-election next year, has been earnestly pushing such changes since the savage special-interest campaign to defeat Democratic Justice Alice Robie Resnick in 2000. He now thinks the timing may be right. Earlier this year, the U.S. Supreme Court used a West Virginia case to signal that expensive election campaigns can undermine the judiciary's credibility. Also, Speaker Armond Budish, speaking for himself if not his Democratic caucus, has told Moyer he is interested in merit selection.

Ideally, these discussions would aim to change how Ohio chooses judges at all levels and would focus on the merit option. Still, either idea, even narrowly crafted for now, would be a step forward for Ohio. Let's hope Moyer and his allies are right, and that this is the time that reform finds traction.

### **A Forum on Judicial Selection: A Time for Action -- [Judicial Selection.net](http://JudicialSelection.net).**

"A Forum on Judicial Selection: A Time for Action" will be held Nov. 19 and 20 at the Ohio Judicial Center and the Center of Science and Industry (COSI) in Columbus. The conveners of the event are Ohio Chief Justice Thomas J. Moyer, the Ohio State Bar Association, and the **League of Women Voters of Ohio Education Fund**. The forum is made possible by a grant from the Joyce Foundation.

"If the public believes that judges are not fair and **impartial**, then the integrity of the third branch is compromised, and this undermines the strength of our entire democratic system," said Meg Flack, president of the **League of Women Voters of Ohio Education Fund**.

"The Ohio State Bar Association is concerned about the public's perception that campaign contributions influence judicial decision-making," said OSBA President Barbara J. Howard. "The OSBA has long supported alternatives to electing justices to the Supreme Court of Ohio and sees this forum as an opportunity for interested parties to examine viable options and develop a course of action **to improve the manner in which Ohio selects justices** for its highest court."

Participants in the forum will include leaders of the judicial branch, the business community, organized labor, state elected officials, civic leaders and members of the legal community. A detailed program schedule and Web site are scheduled for release in October.

Among the leaders who have indicated that they will participate either in person or through a representative are Gov. Ted Strickland, Ohio Senate President Bill Harris, Ohio House Speaker Armond Budish, Ohio Senate Minority Leader Capri Cafaro, and Ohio House Minority Leader Bill Batchelder.

Discussions will be facilitated by OSU Law Professor and Former Attorney General Nancy Rogers and former Franklin County Court of Common Pleas Judge Yvette McGee-Brown.

The cost of judicial campaigns has been increasing for years, forcing judges to raise money like politicians, which has led to the corrosive public perception that justice is for sale. From 1999 to 2008, \$200.4 million was raised by candidates for state supreme courts. In that time period, candidates for the Ohio Supreme Court raised \$21.2 million, placing Ohio second in the nation in the amount raised by Supreme Court candidates.

The Forum on Judicial Selection was formed because members of the judicial, legal and good-government communities recognize that a genuine opportunity for change exists. National attention on the problem has increased since the U.S. Supreme Court decided *Caperton v. Massey* on June 8, a case involving a Justice on the West Virginia Supreme Court of Appeals who cast the deciding vote in a decision benefiting a campaign supporter who had contributed more than \$3 million to his election effort.

*Note: On Nov. 11, Justice Sandra Day O'Connor's husband, John J. O'Connor III, lost his long battle with Alzheimer's disease. The conveners of the Forum on Judicial Selection send their heartfelt condolences to Justice O'Connor and her family at this difficult time in their lives. In a telephone call to Chief Justice Moyer, Justice O'Connor expressed her sincere regrets that she will not be able to attend the forum as planned. She asked that we pass along her strong support for the effort to reform the judicial selection method for Supreme Court Justices and her pledge to work with us in the future on this important task.*

**Did you know?** The Institute for Legal Reform, an arm of the U.S. Chamber of Commerce, has offered its support for an appointive judicial selection model it believes will promote accountability and quality while keeping judges insulated from raising millions from parties who appear before them. [Read more.](#) . .

**Ohio Chief Justice Thomas Moyer pushes to change how state judges are selected --** [Patrick O'Donnell, The Plain Dealer, 11/16/09.](#) COLUMBUS -- Ohio Chief Justice Thomas Moyer is making a final push in his last term on the court to **change how the state selects its judges.**

This week he will host a forum in Columbus on judicial selection that will feature presentations on ways other states pick judges that differ from Ohio's elections.

Moyer has long wanted to **reduce the amount of fund raising and campaign donations needed for state Supreme Court elections.** Over the last several years, he has pushed to set campaign finance regulations for the court.

This time he is seeking a structural change in which the governor and a review panel would select Supreme Court justices. Voters would decide a few years later whether to retain those justices.

His second choice, he said last week, would be a system of public financing of judicial election campaigns.

"The goal is to get the money out of the election process," he said.

Moyer said he hopes the state's legal community can reach consensus at the day-and-a-half forum that change is needed and gather behind one of those two alternatives.

Though changes have been suggested before and were voted down, most recently in the 1980s, Moyer said legislative leaders have said they back changes. He cited Ohio House Speaker Armond Budish, a Beachwood Democrat, as supporting changing the state Constitution to have Supreme Court judges appointed. Such a change would require voter approval.

Moyer also said fallout from a nasty campaign in 2000 targeting former Ohio Supreme Court Justice Alice Robie Resnick and a recent U.S. Supreme Court decision involving a West Virginia Supreme Court judge who repeatedly ruled in favor of a major donor have brought more attention to the issue.

"This is the best opportunity we've had in my 23 years on the court," Moyer said.

But the idea may be a hard sell for some lawmakers, especially Republicans, who now hold all the seats on the elected state Supreme Court.

Legislative leaders say they are at least open to discussing changes.

Budish spokesman Keary McCarthy said the speaker welcomes a free-wheeling debate on the issue.

"The bottom line is that he is supportive of being part of the continuing dialogue around this issue," McCarthy said.

Sen. Mark Wagoner, a northwest Ohio Republican who serves as the Senate majority whip, called the proposal from Moyer a "commendable first step" toward judicial reform.

"I'm willing to work with the chief on his proposal, and I find it commendable that he is trying to get money out these Supreme Court races," Wagoner said. "There would still be public oversight of these seats with these retention elections. I'm open to it."

Sen. Tom Niehaus, a New Richmond Republican who is the leading candidate to become the next senate president in 2010, said he wants to hear more about how the process would work.

"I'm certainly open to listening to his ideas on this," Niehaus said. "I need to understand more of the details of how this would change our current system for electing justices."

The forum starts Thursday afternoon at the Ohio Judicial Center and continues through Friday. It is also sponsored by **the League of Women Voters** and the Ohio State Bar Association.

Thursday's 2 1/2-hour panel discussion includes presenters from Arizona and Indiana, where a nominating panel recommends finalists for governors to appoint Supreme Court judges for two-year terms. Voters then decide whether to retain that judge for a six-year or 10-year term.

Thursday's discussion also includes a panelist from North Carolina, where the public gives candidates for appeals courts and the state supreme court money for the general election campaigns. Candidates there raise money for their primaries, within a specified range.

**Wis. court tosses judge campaign-money recusal rule -- [Paul J. Nyden, The Charleston Gazette, 11/9/09](#).** CHARLESTON, W.Va. -- Wisconsin is the first state whose Supreme Court has issued a ruling about political campaign expenditures after the U.S. Supreme Court's June 8 ruling that West Virginia Supreme Court Justice Brent Benjamin should have stepped down from hearing cases involving Massey Energy.

In 2004, Massey CEO Don Blankenship spent \$3 million of his own money to help elect Brent Benjamin to the West Virginia court.

Benjamin then cast critical votes, in two 3-2 rulings in November 2007 and April 2008, that overturned a \$50 million jury verdict in favor of mine owner Hugh Caperton.

But in the Caperton ruling, the U.S. Supreme Court set no specific standards for how large campaign contributions must be to require justices to step down.

On Oct. 28, the Wisconsin Supreme Court issued a 4-3 ruling that dismissed a petition to **require judges to step down from cases involving any party who contributed \$1,000 or more to that judge's election campaign.**

The **League of Women Voters** filed that petition on June 20, 2008.

The League's proposed \$1,000 limit would have applied to individuals and to larger groups, such as law firms and private corporations.

The Wisconsin Supreme Court ended up favoring alternative rules suggested by the Wisconsin Realtors Association and Wisconsin Manufacturers & Commerce (WMC), according to an Oct. 28 article in the Milwaukee Journal Sentinel.

Wisconsin's **judicial ethics code** already requires judges to **recuse** themselves when their judicial "**impartiality**" can be questioned.

But the new Wisconsin Supreme Court ruling states campaign contributions alone are not enough to require recusals.

And like the U.S. Supreme Court ruling, the Wisconsin ruling sets no specific amount of campaign contributions that would require a judge to step down.

Mike Wittenwyler, a lawyer with the Milwaukee law firm of Godfrey & Khan, told The American Lawyer he believes the Wisconsin ruling "is entirely consistent" with the Caperton decision.

Wittenwyler, whose firm represents the WMC and Wisconsin Realtors Association, said the new ruling does not mean judges never have to step down from hearing a case, but that limited campaign contributions are not an automatic cause for **recusals**.

Wisconsin Justice Annette K. Ziegler voted with the 4-3 majority in the Oct. 28 ruling.

Last year, Ziegler provoked criticism when she wrote the majority opinion, in a 4-3 court decision, that helped WMC and its member groups get hundreds of millions of dollars in business tax refunds, according to the Journal Sentinel.

WMC and its members spent \$2 million to help Ziegler get elected.

At the time, Ziegler pointed out WMC was not a named party in that case and that neither side asked her to step down, according to the Journal Sentinel.

Questions relating to limits on campaign spending in Wisconsin, and elsewhere, remain open and undecided.

In its June decision, the U.S. Supreme Court sent the Caperton case back to the West Virginia for a rehearing, requiring Benjamin to step down.

Benjamin cast two critical votes overturning the August 2002 Boone County jury verdict awarding \$50 million to Caperton and Harman Mining, which operated a union mine near Grundy, Va.

The Boone County jury found Massey illegally took over Harman's long-term coal sales contract with LTV Corp. With interest, that verdict is now worth close to \$85 million.

The West Virginia Supreme Court reheard the Caperton case on Sept. 8. It has not yet issued a new opinion.

**Former U.S. Supreme Court Justice to headline Ohio judicial selection forum** – [OHIO STATE BAR ASSOCIATION, 9/8/09](#). COLUMBUS -- Former U.S. Supreme Court Justice Sandra Day O'Connor will join Ohio leaders for a forum to discuss the process for selecting Justices of the Supreme Court of Ohio.

“A Forum on Judicial Selection: A Time for Action” will be held Nov. 19 and 20 at the Ohio Judicial Center and the Center of Science and Industry (COSI) in Columbus. The conveners of the event are Ohio Chief Justice Thomas J. Moyer, the Ohio State Bar Association, and the **League of Women Voters of Ohio Education Fund**. The forum is made possible by a grant from the Joyce Foundation.

“The time has come to do something to address the widespread **perception that campaign contributions influence judicial decision making**,” said Chief Justice Moyer. “Our goal is to determine whether to pursue a new selection method for Supreme Court Justices and to explore the various reforms that other states have implemented.”

“If the public believes that judges are not fair and **impartial**, then the integrity of the third branch is compromised, and this undermines the strength of our entire democratic system,” said Meg Flack, president of the **League of Women Voters of Ohio Education Fund**.

“The Ohio State Bar Association is concerned about the public’s perception that campaign contributions influence judicial decision-making,” said OSBA President Barbara J. Howard. “The OSBA has long supported alternatives to electing justices to the Supreme Court of Ohio and sees this forum as an opportunity for interested parties to examine viable options and develop a course of action to improve the manner in which Ohio selects justices for its highest court.”

Participants in the forum will include leaders of the judicial branch, the business community, organized labor, state elected officials, civic leaders and members of the legal community. A detailed program schedule and Web site are scheduled for release in October.

Among the leaders who have indicated that they will participate either in person or through a representative are Gov. Ted Strickland, Ohio Senate President Bill Harris, Ohio House Speaker Armond Budish, Ohio Senate Minority Leader Capri Cafaro, and Ohio House Minority Leader Bill Batchelder.

Discussions will be facilitated by Ohio State University Moritz College of Law Professor and Former Attorney General Nancy Rogers and Franklin County Court of Common Pleas Judge Yvette McGee-Brown.

The cost of judicial campaigns has been increasing for years, forcing judges to raise money like politicians, which has led to the corrosive public perception that justice is for sale. From 1999 to 2008, \$200.4 million was raised by candidates for state supreme courts. In that time period, candidates for the Ohio Supreme Court raised \$21.2 million, placing Ohio second in the nation in the amount raised by Supreme Court candidates.

The Forum on Judicial Selection was formed because members of the judicial, legal and good-government communities recognize that a genuine opportunity for change exists. National attention on the problem has increased since the U.S. Supreme Court decided

*Caperton v. Massey* on June 8, a case involving a Justice on the West Virginia Supreme Court of Appeals who cast the deciding vote in a decision benefiting a campaign supporter who had contributed more than \$3 million to his election effort.

**Blog: Former Justice Sandra Day O'Connor to headline Ohio judicial selection forum -- [William Hershey, DAYTON DAILY NEWS, 9/8/09.](#)** Former U.S. Supreme Court Justice Sandra Day O'Connor will be the headliner at a forum on Nov. 19-20 in Columbus to discuss **the process for selecting justices** of the Ohio Supreme Court.

"The time has come to do something to address the widespread perception that campaign contributions influence judicial decision making," Ohio Supreme Court Chief Justice Thomas J. Moyer said in a press release on Tuesday, Sept. 8.

"Our goal is to determine whether to **pursue a new selection method for Supreme Court justices** and to explore the various reforms that other states have implemented."

Moyer is sponsoring the forum along with the Ohio State Bar Association and the **League of Women Voters of Ohio Education Fund.**

"A Forum on Judicial Selection: A Time for Action" will be held at the Ohio Judicial Center and the Center of Science and Industry (COSI).

The Joyce Foundation provided a grant for the forum, the release said.

Ohio voters now elects members of the Supreme Court. Candidates are nominated in partisan primaries but appear on the general election ballot without party affiliation.

Other suggestions have included having governors appoint justices who then would have to run in elections to retain their seats.

Details of the forum and a Web site will be released in October, the release said.

**The League of Women Voters Joins Amicus Brief in *Caperton v. Massey* – [THE LEAGUE OF WOMEN VOTERS, 3/3/09.](#) -- JUDICIAL CAMPAIGN SPENDING ARGUED BEFORE U.S. SUPREME COURT. League's Amicus Brief Sees Judicial Independence, Due Process At Stake.** WASHINGTON DC - Today the U.S. Supreme Court hears oral arguments in *Caperton v. Massey*, a case that weighs the influence of campaign spending in state court elections with judicial independence. The **League of Women Voters** joined an amicus brief in this case that calls on the Supreme Court to both preserve judicial **impartiality** and **reform judicial selection.**

"The League is involved with this case because of its compelling importance – too much special interest money is being dumped into state court elections nationwide," said Mary G. Wilson, national President of **the League of Women Voters.** "The Supreme Court can

do a great deal of good in this case by ruling in favor of judicial **impartiality** and restoring confidence in our nation's courts."

"There has been an alarming trend across the country of increasing financial contributions from special interests to judicial elections," stated Wilson. "For the past decade, state and local Leagues have been working with concerned citizens and communities to reform judicial campaigns and lessen the influence of special interest contributors on the legal system."

"Americans are looking to the nation's highest court and their decision in *Caperton v. Massey* to stem the flow of special interest money and politics into our courts," Wilson concluded. "Citizens need to know that due process and **judicial independence** will not be compromised for political gain. Every American's right to equality under the law must be protected. "

Read the *Caperton v. Massey* amicus brief.