CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

P.O. Box 69, Gedney Station
White Plains, New York 10605-0069

Tel: (914) 421-1200
Fax: (914) 428-4994

E-mail: judgewatch@aol.com
Website: www.judgewatch.org

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TO: Sandra Peddi, Newsday
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RE: Judicial Elections

FROM: ELENA RUTH SASSOWER, Coordinator

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MESSAGE: As discussed —
Enclosed are pages from the Report on judicial elections of the NYS Commission on Gov't Integrity (pp 267-275)
I'll sort through my clippings file for materials pertinent to the situation on the Island, + will send them as I find them.
Meantime keep up the good work!!

CENTER *for* JUDICIAL ACCOUNTABILITY, INC. *is a national, non-partisan, non-profit citizens' organization documenting how judges break the law and get away with it.*

GOVERNMENT ETHICS REFORM FOR THE 1990s

The Collected Reports of the New York State Commission on Government Integrity

Edited by BRUCE A. GREEN

With an Introduction by JOHN D. FEERICK

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PART TWO: THE NOMINATING PROCESS

BOTH REPORTS IN THIS SECTION look at how the political parties in New York choose their candidates for state and local office. This is a question of obvious importance since the voters' choice in the general election is effectively limited in most instances to the candidates sponsored by the major parties. The question is even more important in that, in many local elections, the candidate who receives the dominant party's nomination is virtually assured of being voted into office in November. The nominating process therefore plays a critical role not only in determining whether well-qualified individuals will serve in elected office but also in providing voters the only meaningful say they may have in choosing their elected officials. Like virtually every civics group and disinterested observer who has examined how candidates are nominated in New York, the Commission found serious defects in two aspects of this process: the manner in which nominees for elected judgeships are selected and the legal requirements for placing a candidate's name on the ballot in a primary election.

"Becoming a Judge: Report on the Failings of Judicial Elections in New York State" focuses on how candidates for elected judgeships are chosen. While the judges of the highest court and several other courts in New York State are appointed, the judges of many courts, including the State's court of general jurisdiction, are elected. After conducting public hearings, interviewing sitting and former judges, experts, political figures, and spokespersons of concerned organizations, and reviewing documents obtained from the state and local Boards of Elections, the Commission became convinced that the elective process is so defective that it should be replaced entirely by a system for appointing judges.

The report describes the results of an investigation of the practices in Queens County, New York, a locality which was representative of others throughout the State. For more than a decade, the process for nominating judges in Queens was dominated by local party leaders who made their decisions based almost entirely on political considerations. A local leader typically endorsed particular nominees for elected judgeships, not because of their qualifications, but as a reward to them or their supporters for past contributions and work for the local party organization. The candidates' qualifications again took a backseat to political concerns in the course of the "horsetrading" that typically took place when different local leaders had to agree among themselves on a single nominee.

The process of judicial elections described in this report eliminates from consideration the vast majority of able candidates and makes the selection of talented judges a matter of pure happenstance. It also undermines confidence in the ability of judges to serve fairly and impartially after they are elected, because elected judges who aspire to be renominated when their term expires must take steps to maintain the favor of their political party leaders as well as to raise funds for future campaigns.

Although advocates have advanced a variety of arguments in favor of judicial elections, the Commission analyzes and rejects those arguments and concludes that the selection of judges should be removed from the control of political party organizations and the pressures of election campaigns. It proposes replacing the current system of judicial elections with a procedure for judicial appointment by the Governor, County Executive, or Mayor, depending on the court. The most important feature of its proposal is the creation of a multi-partisan nominating commission. This body would be authorized to nominate a limited number of well-qualified candidates to the Executive, whose discretion over appointments would therefore operate within narrow constraints. As envisioned by the Commission, this appointment process would protect judicial independence and non-partisanship while promoting the selection of judges from among the widest pool of qualified candidates.

"Access to the Ballot in Primary Elections: The Need for Fundamental Reform" examines the procedural requirements which must be met in order for a candidate to appear on the ballot in a primary election. Under New York law, which is far more complex and restrictive than that of any other state, a candidate seeking a place on a party's primary ballot must file nominating petitions containing a specified number of signatures of voters who are enrolled in the party. Although a candidate's petitions may contain more than enough signatures of eligible voters, the petitions may nevertheless be challenged, and the candidate denied a place on the ballot, for any of a variety of technical reasons. For example, nominating petitions may be thrown out because they failed to include the assembly and election districts of the voters who signed them, because the subscribing witness forgot to date a petition, because the cover sheets that accompany the petitions contained an innocent misstatement or omission, or because the petitions were not correctly bound or numbered.

The requirements of New York's ballot access law have engendered substantial litigation—estimated to amount to half of all the election litigation in the United States. Out of concern that some of their petitions will be successfully challenged on technical grounds, candidates customarily feel compelled to gather far more signatures than would otherwise be required by law. Candidates must also anticipate spending a great deal of time, money, and energy in defending against challenges to their petitions. Because of New York's complicated law and its strict application by the courts, some candidates with popular support have been denied a place on

the ballot for technical reasons, others have had their resources sapped by the nominating process, and still others have been discouraged from running at all. The only ones who benefit from the current law are incumbents and other candidates who are supported by party organizations which have experience in dealing with the complex legal procedures. At the same time, as the Commission points out, the ultimate losers are the "voters, whose right to determine their parties' candidates, and, ultimately, officeholders, is often rendered meaningless." Believing that no amount of tinkering will correct the serious defects in the current law, the Commission calls for the establishment of a multi-partisan panel to recommend a complete overhaul of the process for placing candidates on the primary ballot.

8.
BECOMING A JUDGE: REPORT ON THE FAILINGS OF JUDICIAL ELECTIONS IN NEW YORK STATE

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I. INTRODUCTION

THE EXECUTIVE ORDER that created the Commission charges it with, among other tasks, "investigat[ing] weaknesses in existing laws, regulations and procedures regarding the selection of judges and . . . determin[ing] whether such weaknesses create an undue potential for corruption, favoritism, undue influence . . . or otherwise impair public confidence in the integrity of government." No task of this Commission is more important. Judges, as the personal embodiment of our American ideal of justice, occupy a unique place in our system of government and must be held to the highest standards of skill, independence, honesty, and fairness.

The Commission has found that New York State fails to choose its judges in the manner that best fosters the presence of these attributes on

the bench. Indeed, some methods of judicial selection—namely, judicial elections—are so captive to the interests of political party organizations that they clash with the ideal of an independent and non-partisan judiciary. By subordinating judicial values to political favoritism and party loyalty, judicial elections invite undue influence over judges and threaten public confidence in the integrity of the judicial system.

Appointive as well as elective systems exist in New York State. Judges on our highest court—the Court of Appeals—are appointed by the executive branch, as are judges on the Court of Claims, Criminal Court, and, in New York City only, Family Court. In contrast, judges are elected to New York's court of general jurisdiction—the Supreme Court—as well as to the Surrogate's, County, City, District, Civil, and, outside of New York City, Family Courts. Furthermore, the laws provide a variety of methods both for appointing and for electing judges.

Recognizing this complexity, the Commission has conducted an extensive investigation and study of judicial selection in New York State. We have interviewed approximately 50 sitting and former judges around the state, and more than 60 experts, political figures, spokespersons for various organizations concerned with judicial selection, and other individuals acquainted with the selection of judges in various parts of the state.[1] The Commission also has subpoenaed or otherwise obtained relevant documents from different political organizations, from the New York State Board of Elections, and from various county Boards of Election. Finally, on March 3 and March 9, 1988, the Commission held public hearings concerning issues raised in the course of this investigation.

Our investigation has shown that the election of Supreme Court justices and judges of courts of limited jurisdiction[2] is so intertwined with party politics that the process violates two principles basic to our ideal of an independent judiciary. First, a method of judicial selection should protect the judiciary as much as possible from pressures and concerns that may detract from the ability to be fair and impartial. The concern here is not only undue influence but the appearance of undue influence and its effect on public confidence. As Chief Judge Sol Wachtler testified at our hearings, "the whole justice system is balanced very delicately on what we call public trust."[3] The elective processes threaten this delicate balance by

[1]A number of individuals who provided information, including judges, asked that they not be publicly identified by the Commission. Still other individuals, including judges, declined to speak with us at all. For the sake of uniform treatment, an individual will not be identified by name in this report unless he or she gave public testimony before the Commission.

[2]By "courts of limited jurisdiction" we refer to the Court of Claims and to Surrogate's, County, City, District, Civil, Criminal, and Family Courts. We do not consider in this report Town and Village Justices or Justices of the Peace.

[3]I Tr. at 35. In this report, "I Tr." or "II Tr." refers to the transcript for the first or second day of the public hearings, respectively, followed by the page of the transcript.

exposing judges, even after they have won party support, to political pressure arising from the need to maintain the favor of the party organizations that sponsored them. Even when judges resist this pressure, it places judicial independence in jeopardy.

Second, a method of selecting judges should guarantee that the broadest possible pool of qualified candidates be considered for judgeships, without regard to political party support. Adherence to this principle not only ensures that candidates are treated fairly but also encourages the best potential judges to come forward and promotes their maximum representation on the bench. Elective systems, however, in granting control over judgeships to political party leaders in the various parts of the state, have made service and influence within party organizations usually a prerequisite to obtaining a judgeship. These systems unquestionably have produced many fine judges in our state's history. But the fact remains that candidates who lack a political connection, no matter how impressive their credentials, are usually excluded from consideration.

Our investigation further persuades us that these defects in elective systems stem, not from individual abuses or unusual local circumstances, but from the inherently partisan nature of political party activity. While party control may be appropriate in the case of election to offices within the legislative or executive branches, in the case of judicial elections such control undermines the moral foundation of the judiciary by threatening its independence and non-partisanship.

Appointive systems, by contrast, while also vulnerable to partisan politics, can be carefully designed to minimize the risks that politics poses to judicial independence and to fair access to the bench. For example, judicial nominating commissions, by nominating for possible appointment to the bench only a small number of candidates found to be well-qualified, can limit the executive's discretion over appointments and thus the role of partisan politics at the executive level. Moreover, if each nominating commission itself is non-partisan or multi-partisan and reflects a broad spectrum of community interests, then nominations are more likely to represent a genuine consensus of informed opinions rather than the will of a political leader or faction. In these and other ways, a well-designed appointive process can free sitting judges from at least those pressures that stem from dependence on political leaders.

For these reasons, the Commission recommends abolition of the elective systems for selecting Supreme Court justices and judges of courts of limited jurisdiction in favor of an appointive system. The appointive process we recommend should have the following features:

1. Nominating commissions should be established in each judicial district for Supreme Court nominations and in the appropriate geographical area for nominations to courts of limited jurisdiction.
2. The members of each nominating commission should be selected by

a range of government authorities, including the Governor, the four majority and minority leaders of the New York State Senate and Assembly, the Chief Judge of New York State and the Presiding Justice of the relevant Appellate Division, and local authorities such as relevant mayors and county executives.

3. These authorities should strive to achieve as broad a range of community representation on the commission as possible. To that end, limits should be set on the number of commission members who may belong to any one political party and who may be members of the bar.
4. Each nominating commission, after actively recruiting and thoroughly scrutinizing judicial candidates pursuant to written, uniform procedures, should nominate for each vacancy a small number of candidates found well-qualified by a majority of the commission members.
5. The executive vested with the authority to appoint judges from among these nominees should vary depending on the nature and jurisdiction of the court. The Governor should appoint nominees to the Supreme Court, the Court of Claims, and the Surrogate's Court, subject to confirmation by the State Senate. In the case of the other courts, the relevant county executive or mayor should make the appointments.
6. The re-appointment of an incumbent judge should follow the same process within the nominating commission. The commission members must decide by majority vote whether the incumbent is qualified to serve another term. If so, reappointment by the relevant executive should be automatic.
7. Finally, each nominating commission should be required to compile and make publicly available certain statistical information on applicants, nominees, and appointees, including information on the numbers of minority group and female applicants, nominees, and appointees.

In urging these recommendations, we do not suggest that an appointive system necessarily produces more qualified judges or fewer corrupt ones. We have found no persuasive evidence correlating systems of judicial selection with the quality and integrity of judges. Nor do we believe that politics can be banished completely from the selection of judges. What our investigation has shown is that elective systems are so infused with party politics that they do not and cannot protect the independence of the judiciary and promote the broadest possible access to the bench, and that the threat to public confidence alone requires New York State to adopt less partisan alternatives.

II. ELECTIVE SYSTEMS

This section provides, first, a brief overview of elective systems; second, a description and criticism of elective systems; third, a consideration of the most common arguments raised in favor of elective systems; and finally, our conclusions regarding these systems.

A. Overview

Judges in New York State are elected through one of two processes: a judicial nominating convention process, in the case of Supreme Court justices, or a primary process, in the case of judges of some courts of limited jurisdiction. These processes must be repeated for each judicial seat at the end of a fixed term, which is 14 years in the case of the Supreme Court and varies from 4 to 14 years for the other elective judgeships.

Under the judicial nominating convention system, judicial candidates for each party are nominated by a vote of party delegates at a judicial convention. Each party holds its own nominating convention within each of the eleven judicial districts throughout the state. Party delegates are elected in primary elections preceding the nominating convention. Delegates in each district are not legally obligated to vote for any particular nominees. However, they may elect only as many nominees as there are Supreme Court vacancies.[4] Independents can run for Supreme Court without party nomination, but they must comply with special petition requirements of the New York Election Law.[5]

Under the primary system, candidates for judicial office who desire to enter a party primary must garner a specified number of petition signatures from members of that party in their locale (although the candidates themselves need not be members of that party), and otherwise comply with the petition requirements of the New York Election Law. Only those candidates who satisfy these requirements may appear on the ballot on primary day.[6] Typically, one or more candidates from within this group, corresponding to the number of court vacancies, carry the official designation of the party. On primary day, voters from each party choose from among the candidates from their party, thus narrowing the field of candidates from each party to the number of judicial seats available.[7]

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[4]See N.Y. Election Law Sections 6–124 and 6–126 (McKinney 1978 & Supp. 1988).

[5]See id. at Sections 6–138, 6–140 and 6–142.

[6]See, e.g., id. at Sections 6–118 and 6–136.

[7]See id. at Section 6–160.