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No Way to Choose Judges

The idea of holding elections to choose judges sounds a lot better in theory than it works in practice. The unseemly politicking leading up to last week's judicial elections in New York State provides all the evidence Gov. George Pataki needs to press the State Legislature to change to a nonpartisan system of merit selection.

Unfortunately, Mr. Pataki and other state Republican leaders are lunging in the opposite direction. Exploiting the worst aspects of the current system, they waged an extraordinary drive this fall to elect Republicans to a state court that has issued several rulings against the Governor.

Some good candidates won. But as often happens, other good candidates lost for reasons having nothing to do with their suitability for the bench. The defeat of a capable sitting State Supreme Court justice, Charles Kuffner Jr., is one example. Mr. Kuffner, a Republican running for re-election in a heavily Democratic Brooklyn-Staten Island district, lost not on the merits but simply because a political deal fell through. The deal would have won him a cross-endorsement by the Democrats.

There is no way to justify a process that drives judicial candidates to raise money from lawyers and others who want friends on the bench, to romance the clubhouse politicians who control the complex convention and petition processes that put candidates on the ballot and to skirt ethics rules with slick mailings that touch on disputed issues before the courts. These tactics do not encourage judicial quality, much less independence. For example, Arthur Birnbaum, a victorious candidate for

Civil Court in New York City, sullied an otherwise fine record as a Housing Court judge during a hard-fought primary with a brochure that used quotations from parties in an ongoing case to suggest that he was a pro-tenant judge.

Like ordinary politicians, judicial hopefuls may indeed profit from listening to voter concerns at subway stops and supermarkets. But that benefit is outweighed by the negative impact of perpetuating a clubhouse-dominated election system that discourages many qualified individuals from trying for judicial office.

As a Republican, Governor Pataki should be especially offended by an election system that makes it unrealistic for qualified Republicans to compete for lower-level state judgeships in nearly all of New York City. Nevertheless, he did not object to a mischievous court-packing venture that saw the state Republican Party and the national campaign committee headed by his political mentor, Senator Alfonse D'Amato, spend small fortunes to help the campaigns of three Republican candidates for State Supreme Court seats in Albany.

This is the court district that hears most legal challenges brought against state policies and regulations. It has repeatedly issued rulings that have dismayed Mr. Pataki, including one ordering fundraisers for his inaugural committee to release their financial records.

The Governor should be above such tactics. His proper role is to lead the fight for merit selection of judges, not to pioneer crafty strategies to further politicize New York's judicial system.

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