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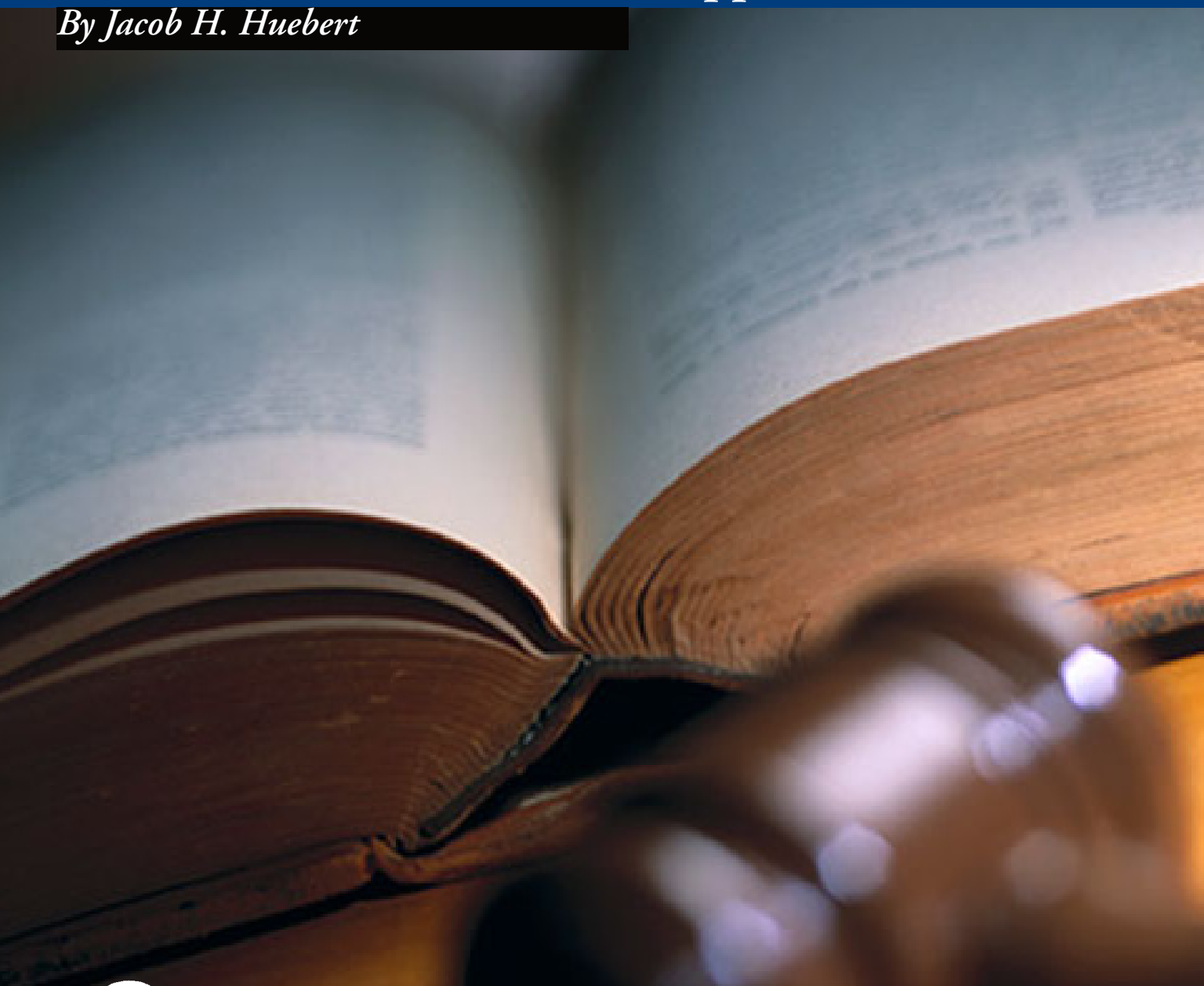
By Jacob H. Huebert



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For nearly 160 years, Ohio has chosen its judges through competitive elections, in which candidates from different political parties run against each other for seats on the Ohio Supreme Court and other appellate and trial courts. For more than seventy of those years, some groups in Ohio have tried to change Ohio to a different system generally known as the "Missouri Plan," in which judges are chosen by the governor from a list created by an unelected nominating committee. Ohio's voters, however, have consistently rejected this idea.

The issue of selecting the judiciary via elections has recently garnered widespread media attention. Various organizations and leaders, including retired Supreme Court Justice Sandra Day O'Connor, have made a coordinated effort to abolish judicial elections, generating debate as to whether they are the appropriate mechanism to select our judicial branch. The purpose of this paper is to make this ongoing discussion more robust by examining the history of judicial elections and the most significant attempts to eliminate them in Ohio. This paper focuses on Ohio's history of selecting judges from the founding of Ohio as a state, to Ohio's adoption of a new Constitution in 1851, to the numerous attempts by the bar and other groups to end judicial elections, to the present.

Ohio's Founding and the 1802 Constitution

To understand how Ohio came to choose its judges through elections, it is helpful to consider how Ohio became a state.

Before it was a state, the "Ohio Country" was part of the Northwest Territory, which was established by the Northwest Ordinance in 1787. In the years that followed, U.S. politics were dominated by two parties, the Federalists and the Democratic Republicans (or simply "Republicans"). The Federalists favored a broad reading of the federal government's powers and wanted to centralize power in the federal government, following the philosophy of their founder, Alexander Hamilton. In contrast, the Republicans wanted to limit centralized government power, following the principles advanced by their intellectual leader, Thomas Jefferson.

Under the Northwest Ordinance, Ohio was at first under federal control, with a supreme court and a staunch Federalist governor, Arthur St. Clair, appointed by Congress. When the population reached a certain point provided by the Ordinance, Ohio qualified to have a territorial legislature—but St. Clair remained governor and retained a veto power, and all territorial laws were subject to Congress's approval. By 1802, however, Ohio had reached the population necessary to seek statehood (60,000), and Ohioans began to pursue it so they could govern themselves.[2]

St. Clair and the Federalists fought hard to keep the territory under their control. St. Clair claimed that the people of Ohio were "ill qualified to form a constitution and government for themselves."[3] Federalist Territorial Secretary Winthrop Sargent wrote that Ohio should not get statehood "until the majority of the Inhabitants be of such Characters and property as may insure national Dependence and national Confidence."[4] St. Clair pushed a Division Act through the territorial legislature, which would have divided Ohio into two parts so that neither would have enough citizens to become a state, and federal control could continue.[5]

The Republicans had recently taken control of the U.S. Congress, however, and Republicans from Ohio were able to get Congress not only to quash the Division Act but also to authorize Ohio to hold a convention at which it could decide to become a state and frame a constitution.[6] Ohioans held their convention, and St. Clair showed up to argue that the delegates should drop their attempt at statehood, which he claimed was unconstitutional as "an interference with the internal affairs of the country."[7] The delegates rejected St. Clair's plea, voted for statehood, and created the first Ohio Constitution.[8]

In the new Ohio government, the legislature was dominant over the other branches, reflecting the framers' concern for giving the people as much control as possible over their government after years of oppression by Congress and its appointed governor and judges. Thus, the 1802 Constitution gave the governor

almost no power, not even a veto.[9] The state's judges were to be chosen by a joint ballot of both houses of the legislature to sit for seven-year terms.[10]

The notion of electing judges was not considered because the concept was essentially unheard of. Jefferson himself had not yet endorsed the idea,[11] and it would be another thirty years before Mississippi would become the first state to elect all of its judges.[12] But Ohio was ahead of most other states with respect to holding judges democratically accountable. Most other states gave judges "virtual" life tenure,[13] and many provided for appointment of judges by the governor rather than the legislature.[14]

In any event, the judiciary established by the 1802 Constitution soon proved inadequate for other reasons. As the state's population rapidly rose, the court system was unable to handle a growing caseload, and reform became necessary.[15] This was a leading reason why Ohio decided to scrap its old Constitution entirely and convened to create a new one beginning in 1850.[16]

The 1851 Constitution

In 1850 and 1851, delegates met to create a new Constitution for Ohio. Though it has been amended numerous times, the Constitution created by those delegates and ratified by voters remains in place today.

The 1851 Constitution provided for selection of judges at all levels by popular election. There was no debate concerning the best method for judicial selection, as it appears that all sides agreed going into the convention that this was the appropriate judicial-selection method. Many observers believe this consensus existed because the framers of the 1851 Constitution "simply followed the fashion of the times"[17] in the age of "Jacksonian democracy," which favored using elections as much as possible to choose all types of government officials. Certainly Ohio was part of a trend: of twenty-one constitutional conventions held nationwide between 1846 and 1860, nineteen provided for judicial elections—and, in the other two cases, voters rejected the proposed constitutions.[18]

But some believe that Ohio's reasons for choosing elections went beyond "fashion." University of Virginia law professor Caleb Nelson has argued that the people who favored moving to an elective judiciary in mid-nineteenth-century America were not just caught up in a fad or motivated only by an unthinking, emotional attachment to democracy. Instead, many of them believed that electing judges would serve another important purpose: limiting government.[19] The belief was that if the governor or legislators can appoint judges, they will tend to choose people they can count on to uphold their political agenda, and the judicial branch will not provide a meaningful check on the other branches. Letting the people choose their judges gives someone outside the existing government a voice and makes the judicial branch more independent—not of the people, but of the rest of the government. The idea, in Nelson's words, was "to enlist some officials—judges—in the process of weakening officialdom as a whole," which was in keeping with the "proud philosophical traditions of the Founding," which distrusted power and valued liberty.[20]

In fact, Ohio's experience under the 1802 Constitution demonstrated the need for judicial independence from the legislature. In 1810, the Ohio legislature passed a "sweeping resolution" that dismissed all sitting judges, and replaced them with others who would be more favorable to the legislature.[21]

Moreover, a desire to limit government was an important part of the ideals of the Jeffersonians (and Jacksonians) who were by 1850 called Democrats and were the majority party at the constitutional convention.[22] Their main opponents, the Whigs, were the intellectual descendents of Hamilton and the long-defunct Federalist Party.

Although there was no debate at the constitutional convention over whether to have judicial elections, transcripts of debates over other issues related to the judiciary show that delegates had given the issue serious thought—and suggest that the Whigs came to embrace judicial elections reluctantly under public pressure. (In fact, the Whigs had long resisted having a constitutional convention at all.)[23]

For example, the delegates debated whether judges' terms should be reduced from seven years to four—but their arguments were essentially the same as those they might have made if they had been debating whether judges should be elected at all.

The Whigs' views emphasized the alleged non-partisan nature of courts and argued that judges should not be swayed by popular opinion because the judicial branch's "sole function is the exercise of judgment" and the "law-making power is confined exclusively to another department of the government."[24] Sounding much like opponents of judicial elections in the century and a half that would follow, Whigs put "judicial independence" first: "How can . . . a judge take the solemn oath to discharge his high office without fear, favor or affection; he who is constantly in dread—who is trembling at every step, lest his decisions may not be acceptable to a popular majority."[25] The Whigs said they feared that judges would be beholden to the "whims, caprice and fluctuations" of popular opinion, just as judges in England had once been subject to the king's control.[26] They also expressed concern about the potential for a "tyranny of the majority"[27] or descent into "anarchy"[28] if judges were swayed by popular opinion.

In the Democrats' view, the Whigs had it backward: governmental institutions should reflect a distrust of government officials, not distrust of the people. Democrat delegate Charles Reemelin charged the Whigs: "[W]ith you, the people are corrupt, full of whims, prejudices, and passion; with you the people are full of cruelty; you talk glibly of people's impulses, and these impulses with you are always wrong."[29] In his view, it was government, not the citizenry, that tended to get out of control. He stated the Jeffersonian view:

> The mere machinery of government, unless aided and acted upon freely by public opinion, and an enlightened people, has always done a good deal of harm to the people, and but seldom accomplished for them any good. . . . I have but little confidence in that vaunted "legal talent," "experienced age," "independent courts," &c., unless backed and kept alive by republican habits, and a perfect equality among all classes of the people.[30]

The Whigs maintained a more benevolent view of judges and government. One delegate averred that "[i]n the history of the world, not one instance can be found in which the liberties of the people have been taken away by the judiciary."[31] As for accountability, one delegate said, "I too want the judge to feel as if he had a master, but that master should be the God who made him."[32]

Of course it is difficult to determine what motivated all of the delegates from reading the statements of a few of the most outspoken ones, and scholars debate why states shifted to judicial elections. Historian Kermit Hall, for one, has downplayed the role of ideologues and argued that moderate lawyers at the state constitutional conventions accepted judicial elections because they believed it would increase the independence of the bench and make it easier to adopt needed reforms.[33]

The delegates compromised at five-year terms for judges (which were eventually increased to six years in 1912), but the Democrats apparently had won the overall battle over judicial elections in the court of public opinion before the convention began. Voters approved the 1851 Constitution, and Ohio has selected its judges through elections ever since.

The 1873-74 Convention

The 1851 Constitution required Ohioans to vote every twenty years on whether to hold another constitutional convention. In 1871, they voted to have one, which was held in 1873 and 1874. Once again, reform of the judicial system was a leading reason for calling the convention.

This time, the convention was dominated by lawyers and even referred to by some as a "lawyers' convention."[34] This convention put two measures before voters that would have reduced the judiciary's democratic accountability. The proposed constitution would have increased Supreme Court justices' terms from five years to ten. The convention also proposed an amendment, which the electorate voted on separately, that would have allowed voters to cast ballots only for the majority of seats open on a given court, not all of them. So, for example, if five Supreme Court positions were open, a voter would only be allowed to vote for three justices. Voters overwhelmingly rejected the proposed constitution—250,169 to 102,885—as well as the amendment.[35] According to a historian's account, one reason for voters' rejection was "resentment against domination by lawyers."[36]

Progressives and the Legal Profession

Notwithstanding that attempted tinkering and some other problems with the court system, Ohio's judicial-selection method received relatively little criticism from its adoption in 1851 until 1911. During this time, Ohio judges were nominated by party caucuses and then chosen through a general partisan election, and lawyers reportedly helped the parties ensure that the candidates they ran were competent.[37]

In the early twentieth century, however, two forces came together that would seek to make major changes in the way Ohio chose its judges: the Progressive movement and the organized legal profession.

The Progressives wanted to decrease the influence of the political parties, which they saw as corrupt and serving the interests of business and the wealthy at the expense of common people. Another strand of Progressivism favored moving areas of government activity from electoral control to the control of "experts." In the field of judicial selection, the relevant experts were lawyers and bar associations.[38]

Thus, the Progressives' agenda overlapped with that of the legal profession. In the late nineteenth and early twentieth centuries, the legal profession's view of itself changed. As Hall put it, "[t]he advent of bureaucracy and functional specialization of knowledge reinforced the traditional notion that a profession was a 'special calling.'"[39] In addition, the influence of Harvard Law School Dean Christopher Columbus Langdell and his case method of teaching in law schools spread the view among the profession that law was a "science" and something that expert judges could apply neutrally, free from the influence of politics or any other concerns outside of the law itself.[40] Thus lawyers, like the Progressives, wanted to take judicial selection away from the political parties and put it into the hands of themselves, the experts.[41] They did not appear to be concerned so much about the philosophical debate over elections versus appointment *per se*, so much as they cared about who would ultimately control the judicial branch.[42]

Progressives came to dominate Ohio politics in the early twentieth century, and in 1911 secured passage of the Non-Partisan Judiciary Act, which placed judicial candidates on a separate, non-partisan ballot in a general election.[43] Then, in 1912, they held a constitutional convention. Judicial selection was not on that convention's agenda, but the Progressives did secure an amendment to the existing Ohio Constitution that provided for direct primary election of all elected officials—so voters, not party conventions, would choose who would run for judicial office (and all other offices) in the general election.[44] As the sponsor of the direct-primary provision put it, Progressives believed they were addressing the "chief cause" of problems with representative government, namely the parties' "corrupt, boss-controlled, drunken, debauched, and often hysterical nominating convention[s]."[45]

At the time, the organized bar welcomed the switch to direct primary elections because lawyers believed elections would give lawyers a greater role in the selection process through their endorsement of candidates in primary races.[46] Eventually, though, lawyers came to realize that the change did not increase their influence, and some came to view it as a mistake.

Some critics of the change believed it had led to a decline in the quality of judges. Ohio State political science professor Francis Aumann wrote on this perceived drop in quality in 1931:

> Studies of judicial personnel in Cleveland indicate that after the election of 1912, a much younger group of men began to appear on the bench in that city. It was also observed that before 1912 most of the judges were apparently well seasoned in the practice of the law, whereas, after that date the majority had been trained chiefly in the office of inferior judge or prosecutor. It is also felt by many observers that ability to get publicity rather than judicial fitness becomes an altogether too prominent factor in judicial selection under the new system.[47]

Aumann also cited another legal writer who opined that "no substantial gain has been made by the introduction of the nonpartisan judicial ballot, but . . . in general it has resulted in a less intelligent selection of judicial officers."[48] Walter T. Dunmore, Dean of the Western Reserve Law School, wrote that "[w]hen judicial candidates were selected in party conventions, much was left to be desired, but such conventions at their

worst would not have selected some of the men who select themselves for the primaries and who sometimes gain publicity to secure nomination and election."[49]

The Missouri Plan

Meanwhile, in 1914, Northwestern University law professor Albert Kales proposed an alternative to judicial elections that would put lawyers back in firm control. Under his plan, a council composed of presiding judges would nominate judicial candidates. The chief justice of the supreme court would be the only elected judicial official and would choose from among nominees selected by the council for at least one out of every two court vacancies. These judges would then have to face the voters in a retention election three years after their appointment. In these retention elections, a judge would be unopposed, and voters would simply decide—yes or no—whether he should stay on the bench. After surviving the first retention election, a judge would face another one in six years, then another in nine years. After that, the judge would sit for life. Kales did not consider the retention election essential but included it to make the plan palatable to the public; in fact, it was expected that the retention election would eventually be eliminated.[50] In 1926, social scientist Harold Laski suggested a variation on Kales's plan that would have the governor, rather than the chief justice, choose from a list of nominees.[51]

It took a while before anyone adopted the Kales or Laski system. But in 1937, the American Bar Association endorsed the idea, and in 1940, Missouri adopted a version of it that has come to be known as the "Missouri Plan" for selecting judges. In Missouri, a seven-member judicial commission provides a list of three candidates to the governor, who then chooses one. The judge then runs for retention in the next election and must face a retention election every twelve years thereafter.[52]

Since 1940, twenty-four states have adopted judicial-selection systems along the lines of the Missouri Plan for their highest courts.[53] The Missouri Plan's advocates typically refer to the system as "merit selection," but, as Professor Michael Dimino has noted, some believe this term is essentially "propagandistic" because it assumes that this method chooses judges who have more merit than elected judges—something that election advocates and some scholars dispute.[54]

The 1938 Attempt

If opponents of judicial elections in Ohio had gotten their way, the Missouri Plan might instead be known as the "Ohio Plan" because Ohio's voters considered—but rejected—a similar plan two years earlier.[55]

In 1934, the legal profession's dissatisfaction with direct primaries and non-partisan elections prompted the Ohio State Bar Association ("OSBA") to take up the issue of "the ineffective and unsuitable methods of selecting the personnel of the bench" at a convention in Cincinnati.[56]

Some speakers at the convention called for the abolition of judicial elections. Ohio Supreme Court Justice Robert Wilkin urged the change to restore "professional influence [of lawyers] in the selection of judges."[57] To the gathering's applause, he declared:

> The people of our state are rapidly becoming conscious of the fact that they have gone too far toward pure democracy. They have seen unmistakable signs of the usual resultant inefficiency. There is a growing demand for more social discipline and more authority in government. And the first step toward the realization of that end is a strong and independent judiciary.[58]

Newton D. Baker, a prominent Cleveland Democrat politician and lawyer, told the convention that it was necessary to abolish elections because social policy should not "rest upon whether a particular judge has one or the other political theory or leaning about the operation of law to individual rights and wrongs."[59] To overcome voters' reluctance to give up their right to vote for judges, Baker recommended a blunt message:

> It may not be easy to persuade people to the belief, but I believe if the bar of Ohio went to the people and pointed out what a judge is, what the qualifications are that a judge ought to have, what kind of a life he ought to live, what kind of duties he has to perform, how essentially technical and special they are, how all of those qualifications and qualities have to do with things that are not worn on the sleeve . . . but are the products of burning the

> midnight oil and of the refinement of conscience by duty highly, solemnly, bravely and lonely done, and would say to any audience of citizens: "You have no capacity, you cannot readily acquire the knowledge to choose judges wisely[,]" . . . it could be accomplished.[60]

After the conference, a summary of questionnaires completed by participants concluded that "[o]nly by a fundamental change in the method of selection of judges can there be secured to the state a judiciary of the quality and caliber of which the people deserve and ought to desire."[61] A 1935 poll of OSBA members showed that they overwhelmingly supported appointment, rather than election, of appellate judges. So an OSBA subcommittee began work on a proposed constitutional amendment, and at the OSBA's annual convention in July 1936, the membership approved it. In 1937, the OSBA created a campaign committee, which procured the 300,000 signatures necessary to put the measure on the November 1938 ballot.[62]

If passed, the 1938 ballot issue would have modified Article IV of the Ohio Constitution to require appointment of appellate judges, while allowing each county to decide for itself as to trial judges. Under the plan, an eight-member judicial council would have included the chief justice, one judge from the courts of appeals (selected by all of the state's court of appeals judges), one from the common pleas courts (selected by all common pleas judges), one from the probate courts (selected by all probate judges), and one from the municipal courts (selected by all municipal judges), plus three practicing attorneys chosen by the governor. The council would give the governor three to five names for each vacancy, and the governor would then choose one. In most cases, the matter would then go to the Ohio Senate for confirmation. If the Senate confirmed, the judge would take the bench. If the Senate failed to confirm within sixty days, the governor would have to appoint someone else from the council's list of nominees.[63] After the appointed judge served for six years, he would have to face a retention election in the next general election. If retained, the judge would face another retention election every six years.[64]

To promote the amendment, the OSBA developed an "educational campaign" directed toward the state's newspapers, and all but three of Ohio's metropolitan newspapers endorsed the plan.[65] In addition to the OSBA, a major supporter of the measure was the League of Women Voters of Ohio ("LWVO"), which would go on to play a leading role in future efforts against judicial elections. Also supporting the amendment were the Ohio Chamber of Commerce, the Ohio Bankers Association, the Ohio Congress of Parents and Teachers, the Ohio Council of Retail Merchants, and the Ohio Farm Bureau.[66]

Opponents of the measure included the Democrat Party, the Ohio Federation of Labor, the Congress of Industrial Organizations (CIO), the Ohio State Grange, the Ohio chapters of the National Lawyers Guild, and the Ohio League to Preserve Democracy and Elected Judiciary (formed in September 1938 for the campaign).[67]

It turned out that voters were not as receptive as Newton Baker had anticipated to claims that they "have no capacity" to choose judges. The measure lost by a 2-1 margin, 1,237,443 votes to 621,011 votes. Not a single county had a majority in favor of the amendment.[68]

After the loss, OSBA chairman Howard Barkdull evaluated why the measure had failed so badly. First among his reasons was a backlash against President Franklin Roosevelt's exercises in activist government. He explained:

> The conservative trend, reflected throughout the 1938 election, revealed that the people have no desire for further experimentation in government. The President's supreme court program, the appointment of Justice Black, the defeat of the reorganization bill, and the centralization of authority in the chief executive during recent years, combined to cause a strong psychological reaction against the amendment.[69]

He also believed that the rise of fascism and Communism in Europe scared people away from the plan because "they thought it might be a first step in the direction of dictatorial powers."[70] He also thought opponents of the measure had successfully "branded [the amendment] as an effort on the part of the legal profession to handpick judges" and had convinced people that "the lawyer was given too great a participation in the entire process."[71] And, he said, there simply wasn't enough time and

money to allow the bar "properly to educate the people with respect to the need for this change and to convince them that the amendment would remedy the defects in the present system." [72]

For the next attempt to abolish judicial elections, whenever it might be, Barkdull suggested that lawyers "should not be the principal sponsor," so that the public would not see the measure as a power play by the legal profession. At the same time, he believed it was necessary to get lawyers more solidly behind an appointive system because some had worked against the 1938 measure, "cooperating with the politicians in their desire to retain an active part in the selection of judges."[73] He concluded: "Ohio is a conservative state, inclined to be slow in adopting innovations, but open to convincing after receiving a complete understanding of the merits of the case."[74]

Ohio voters would prove to be even slower to adopt this "innovation" than Barkdull might have imagined. In the decades following the failed 1938 attempt, the OSBA and LWVO persisted in their efforts to abolish judicial elections in Ohio. Proposals to abolish the elective system were introduced in the General Assembly in 1953, 1955, 1957, 1963, 1965, 1968, 1973, and 1977, but none passed both houses and therefore none went before the voters.[75] A 1979 attempt to put the issue on the ballot by petition—backed again by the OSBA, the LWVO, and other groups—fizzled because supporters couldn't get enough signatures.[76]

The 1987 Attempt

Despite all these failures, election opponents believed they had a good chance once again during unusually turbulent times at the Ohio Supreme Court in the mid-1980s. Their motivation for attempting to change the election system during this time can be explained by examining the Court's history and composition.

From the end of the Civil War until 1978, Republicans dominated the Ohio Supreme Court, and the Court developed a reputation for being politically and judicially conservative.[77] This changed in 1979, when Democrats became the majority under the leadership of Chief Justice Frank Celebrezze.[78] With this change in composition, the court began dramatically reshaping various areas of Ohio law. Most notably, a 1982 decision, *Blankenship v. Cincinnati Milacron Chemicals*, held that despite Ohio's workers compensation statute, workers could sue their employers for damages when injured on the job under Ohio's employer-intentional-tort statute.[79]

The changes to the law were newsworthy enough, but the Court drew even more public attention with the behavior of its members, particularly Celebrezze, who came under fire for what critics charged were numerous ethical lapses and other conduct unbecoming of a chief justice. For example, when the Court reversed a Public Utilities Commission of Ohio decision approving a rate increase and ordered the utility to refund amounts already collected from consumers, Celebrezze had the refund checks sent along with a personally signed letter in which he took credit for it—shortly before the 1984 election, when his brother, James, was running for reelection to the court.[80] Celebrezze was also accused of using the Court's disciplinary system to reward attorneys he considered friends and punish others he considered enemies.[81] In a dissent from a decision reinstating a suspended attorney to the practice of law, he accused the majority of having a "silent and sinister" cause for their action. Republican Justices Craig Wright and Andy Douglas sought a legislative hearing on this charge, but Celebrezze didn't show for it; instead, he held a press conference. Douglas attempted to enter the conference, but a staff member blocked him. It was reported that there "was some bumping"[82] and that "an exchange of blows was barely averted."[83] Celebrezze was also accused of using state aircraft for personal purposes.[84]

In addition, Celebrezze made statements that, according to his critics, suggested that he decided cases based on who the parties were rather than on what the law required. He touted his decisions as increasing the rights of "the people"—not their negative rights against the government,[85] but positive rights against other parties frequently before the courts.[86] In a speech to an AFL-CIO meeting, Celebrezze reportedly said, "You and I have common enemies, and we both know who they are." In case it wasn't clear, he enumerated them: big business, big utilities, big insurance companies, and big law firms.[87]

Celebrezze also made an enemy of the OSBA. In 1982, he announced that he was resigning from the bench to run for governor—only to withdraw his resignation and candidacy the very next day. The OSBA became the object of Celebrezze's ire for investigating this announcement—and for rating James Celebrezze as "unqualified" for the court. In response, Chief Justice Celebrezze withdrew the OSBA's fifty-year-old contract for printing court documents and its longstanding power to investigate lawyers and judges.[88]

Celebrezze's approach, which has been described by scholars as the "blatant politicization of the chief justiceship"[89] and credited with introducing "bare-knuckle politics"[90] to the court, presented opponents of judicial elections with what they must have believed was their best opportunity yet to move the state away from judicial elections. One might think that Celebrezze's personal conduct would make voters want to change the system that put him on the bench, and his judicial decisions would make wealthy interests want to fund the campaign. The OSBA prepared another ballot measure in 1985, which would be placed before voters in November 1987 as "Issue 3."[91]

Meanwhile, in 1986, Frank Celebrezze came up for reelection. His opponent was Republican Thomas Moyer, who was then a judge on Ohio's Tenth District Court of Appeals in Columbus, and who would go on become the state's foremost opponent of judicial elections.

Because of Celebrezze's conduct, the 1986 election received unprecedented attention from the public and the media—especially after a *Plain Dealer* article claimed that Celebrezze had received campaign money from a "mob-linked" union political action committee and that the Ohio Supreme Court's reversal of union leader Charles Liberatore's conviction for arson was the result of Celebrezze persuading another justice to switch sides.[92] Moyer blasted Celebrezze for this and for his other controversial conduct, particularly his boasting of the benefits his decisions had bestowed upon "the people" and on union members. As he put it, "[j]udges aren't supposed to go around saying, 'Look what I've done for you.'"[93]

Moyer defeated Celebrezze in what turned out to be, by far, Ohio's most expensive Supreme Court race up to that time, thanks to spending by business interests that wanted to get rid of Celebrezze and plaintiff's lawyers and unions that wanted to keep him. Celebrezze spent $1.75 million in the campaign, and Moyer spent $1.15 million.[94] Celebrezze had been heavily criticized in the media, and received the endorsement of no major newspapers.[95] His loss came even as Ohioans voted overwhelmingly for Democrat candidates in all statewide non-judicial races.[96]

When Celebrezze lost, many thought it spelled defeat for the pending campaign to abolish judicial elections. As a Republican spokesman put it: "You can now argue the system works. The bad apple got thrown out."[97] Ohio Democrat Party Chairman James M. Ruvolo later said that Issue 3 "went down to defeat the night Frank Celebrezze got defeated."[98]

Issue 3's supporters didn't think so. They pointed out that the system only "worked" at great expense. Moyer—who had endorsed Issue 3 even as he ran for the Supreme Court himself[99]—said that the costly campaign provided just "another example of why we need merit selection," adding that he spent "a year and a half of [his] life" working on it.[100] OSBA president Leslie Jacobs argued that the campaign had "demonstrated the terrible problems we have when judicial candidates are required to raise huge sums of money from special interests and to run campaigns in which the character and integrity of those who will sit on our highest courts is publicly questioned. Regardless of who wins at the polls, big money partisan politics destroys public confidence in the impartiality of our courts."[101]

The OSBA and the LWVO proceeded with their efforts to get their plan on the ballot, and they promoted it under the banner of a single-issue organization they created for that purpose called Citizens for Merit Selection of Judges ("CMSJ"). CMSJ was directed by Jack Alton, a prominent Columbus attorney, but it was essentially controlled by the OSBA and LWVO.[102] Also in the coalition supporting Issue 3 were forty other groups, including the Ohio Association of Civil Trial Attorneys, the Ohio Congress of Parents and Teachers, the Ohio Council of Churches, the Women's City Club of Cincinnati, the Ohio Farm Bureau, the American Association of University Women, Common Cause of Ohio, the Ohio State Grange, the National Council

of Jewish Women, the Business and Professional Women of Ohio, the ACTION OHIO Coalition for Battered Women, and the Citizens League of Greater Cleveland.[103]

Among Issue 3's biggest financial backers were businesses and organizations whose interests, clients, or constituents were among those most threatened by the Celebrezze court's pro-plaintiff decisions, such as the Ohio Insurance Institute, Nationwide Insurance, Standard Oil, and the law firms Squire, Sanders & Dempsey and Jones Day.[104]

Getting the issue on the ballot proved difficult. The campaign had problems with invalid petition signatures and was unable to get the issue certified by the Secretary of State until late September of 1987.[105] The Ohio Ballot Board also would not allow the word "merit" to be included in the issue's language because it might unduly influence voters, and it denied backers' request to remove the word "abolish" in the description of what the amendment would do.[106]

The Issue 3 campaign made several arguments to support ending judicial elections. One was that judicial campaigns raised doubts in the public's mind about judges' impartiality; as OSBA Director of Governmental Affairs Bill Weisenberg argued, "people don't contribute large sums of money and expect the other guy to be treated fairly."[107] Weisenberg and the OSBA were also disturbed by what they saw as efforts, particularly by unions, to influence the court's political and judicial philosophy.[108] They also pointed to the "name game"—the fact that candidates with certain last names that are common in Ohio politics, such as "Brown" and "Sweeney," tend to do well on the basis of name recognition and not necessarily because of the candidates' merit. [109] The OSBA also argued that because political parties essentially choose the candidates (though not as directly as they did under the old caucus system), voters weren't really giving anything up.[110]

The leading opponent of Issue 3 was the Ohio AFL-CIO. It was the exclusive funder of the campaign against the measure, through an organization it set up for that purpose, Ohioans for the Right to Vote.[111] The stated purpose of creating a separate organization was to have a name that told voters what (in opponents' view) the crux of the issue was; others speculated that the purpose was to hide the union's role.[112] The two political parties also opposed the measure; the Republicans reversed their position from three years earlier, when they had favored an end to judicial elections.[113]

At the campaign's outset, an AFL-CIO spokesman predicted (correctly, as it turned out) that Issue 3's opponents would not need to spend as much as its advocates because the "whole issue of [the] right to vote is an easy sell."[114] Indeed, the campaign against Issue 3 came down to a simple message: "Don't let them take away our right to vote."

For example, a video shown in union halls across the state displayed images of the Constitution, Thomas Jefferson, and James Madison, as voices quoted the Founders on the right to vote, and then concluded: "Don't let them take away our right to vote."[115] A brochure and television commercial depicted a voting booth bound by chains and a padlock and again gave the imperative: "Don't let them take away our right to vote."[116]

Issue 3's supporters were unable to come back with anything quite so punchy. Their television ad told voters: "Today political bosses control the way we choose our top judges. They blind us by picking candidates with familiar names, then they run half the judges unopposed, tying your hands with no vote. Then, they corrupt the system by pouring in millions of contributions from special interests."[117]

A pamphlet CMSJ distributed listed more reasons why Ohioans should dump the existing system for choosing judges:

> It virtually forces judicial candidates to conduct outrageously expensive political campaigns.
>
> 1. It discourages good candidates from seeking judgeships and encourages politicians to use judgeships as patronage plums.
>
> 2. It denies citizens the information they need to make sound judicial choices.
>
> 3. It turns judges into politicians and fund raisers.
>
> 4. In effect, the current method deprives Ohioans of their right to an impartial judicial system."[118]

The pamphlet also promised that merit-selection would reduce interest-group influence and eliminate the "name

game" problem. [119]

Most major newspapers in Ohio supported Issue 3. Indeed, some time after the campaign, LWVO President Diana Winterhalter said that these supportive papers were willing to print whatever news Issue 3's backers produced and distributed to them.[120] The *Columbus Dispatch* and the *Cincinnati Enquirer* were the only two major newspapers that opposed the plan.

In the week before the election, to refute arguments that Issue 3 was necessary to ensure judicial "merit," Ohioans for the Right to Vote brought in Florida State University political science professor Henry Glick to give press conferences in Cleveland and Columbus. He spoke about a study he had published that reviewed the education, experience, party affiliation, race, religion and other background details of both elected and appointed state supreme court judges who were in office in 1980 and 1981 and found no difference, except that "merit" plans put fewer Catholics and Jews on the bench.[121]

In November, Issue 3 failed at the polls by a 2-1 margin, just as the 1938 proposal had, and it lost in eighty of Ohio's eighty-eight counties.[122] Though backers had spent $1.5 million getting it on the ballot and promoting it, while opponents had spent just $374,619, Issue 3 was soundly defeated.[123]

Following the defeat, Winterhalter predicted that merit selection would make a comeback because of the national trend in its favor.[124] A *Dispatch* editorial, on the other hand, hoped it would "be at least another 50 years before the issue is raised again."[125]

In a 1989 interview, the OSBA's Weisenberg blamed Issue 3's failure on several factors: (1) the complexity of the issue; (2) opponents' ability to frame the issue as being "the right to vote"; (3) the difficulty in collecting and fighting over petition signatures; (4) the relative weakness of proponents' media advertising; (4) the difficulty of grassroots fund-raising; and (5) opposition from the major political parties and unions.[126] Weisenberg lamented that the message was difficult to convey in a sixty-second commercial and said that a stronger educational campaign would be needed for the issue to pass. Weisenberg thought supporters should have been "less gun-shy" and might have done better by humorously depicting the "name game" in advertisements.[127] The campaign had "great editorial support," but that hadn't helped enough because, he said, people "pay more attention to the sports pages and the comics."[128]

Weisenberg thought then that it would take a "major scandal" to get a merit plan instituted.[129] Winterhalter agreed and said that she did not see any such scandals on the horizon, but that the LWVO would continue to monitor the political environment and initiate another petition drive if conditions appeared favorable.[130]

The 1990s and 2000s

The prediction that Ohioans would not be receptive to a "merit selection" campaign anytime soon was correct—though not for lack of controversy surrounding the Ohio Supreme Court and judicial campaigns in the years that followed.

Over the next decade and a half, Ohio experienced some hotly contested Supreme Court races, with money and television advertising playing a big role. Controversy over the races perhaps reached its peak in 2000, when a group affiliated with the Ohio Chamber of Commerce called Citizens for a Strong Ohio spent about $4.2 million in an attempt to unseat Justice Alice Robie Resnick and shift the ideological orientation of the Court in a manner it believed would create a more favorable environment for business in Ohio.[131] The campaign was marked by harsh attack ads, such as one against Resnick that showed a female judge behind a desk changing her vote to favor plaintiffs after having a pile of cash dumped on her desk.[132] The ads didn't work; other groups countered with their own ads, and Justice Resnick won her race.

During the 1990s, Moyer and the Ohio Republican Party's chairman floated suggestions that an appointive system might be worth reconsidering, and certain newspapers' editorial pages occasionally called for it, but nothing came of it.[133] In 1996, Moyer announced the creation of the Ohio Courts Futures Commission, a fifty-two-member group split almost evenly between lawyers and non-lawyers that would investigate ways to improve the court system over the next quarter century. The Commission's task force on "access and quality" debated judicial selection but ultimately couldn't agree and made no recommendation regarding merit

selection. One member said afterward, "We agreed we would never get that issue settled."[134]

With merit selection off the table, Moyer and the Court—over the objection of some justices—also sought to limit electioneering by placing caps on judicial campaign spending, including a $500,000 limit for chief justice candidates, a $350,000 limit for associate justice candidates, and lower limits for lower-court candidates.[135] Judicial candidates promptly challenged the limits as unconstitutional under *Buckley v. Valeo*, a 1976 U.S. Supreme Court decision that held that campaign-spending restrictions infringe upon "core" speech protected by the First Amendment.[136] Federal courts agreed,[137] and the Court eliminated the limits in 2000.[138]

Shortly after the 2000 election, with spending limits constitutionally doomed and attack ads from the Resnick race still fresh in people's minds, Moyer thought the time was right to again call for an end to judicial elections. His words: "This is our opportunity. We must seize it now."[139] The *Plain Dealer* and the chair of the Ohio Republican Party agreed, but few others did.[140] Moyer said it would take a "broad-based coalition" to pass the measure, but none formed to do so. Top state legislators wouldn't touch it because, as one news story put it, they "flinch[ed] at the thought of attaching their name to a cause unpopular with voters."[141] Even the OSBA and LWVO, which had pushed futile anti-election efforts for decades, weren't interested. LWVO executive director Kelly McFarland said that the group was looking at other means of protecting judicial independence because "voters haven't been supportive in the past."[142]

When the lack of support for an anti-election campaign became apparent, Moyer called for other reforms in a March 2001 address to the legislature, including mandatory reporting of judicial campaign contributions; mandatory disclosure of campaign-related contributions and expenditures of funds from interest groups, parties, and contributors; and creation of a bipartisan commission to study an appointive system.[143] The next year, after another judicial campaign season with big spending (a record $6.2 million by candidates and $6 million by interest groups)[144] and abrasive advertising, Moyer made additional suggestions, such as lengthening judges' terms of office; increasing the required number of years of legal practice for judicial candidates; creating a committee to review candidates' legal knowledge, experience, and background; requiring disclosure of independent advocacy groups' finances and contributors; and studying the feasibility of public funding for judicial campaigns.[145]

In March 2003, Moyer held an event called "Judicial Impartiality: The Next Steps" to discuss possible reforms with representatives of organized labor, the business community, the political parties, judicial and bar associations, and grassroots organizations. This led to the formation of a panel, which included the OSBA and other groups, to explore these ideas further. The panel's recommendations, issued in early 2004, excluded merit selection.[146] OSBA president Keith Ashmus explained that merit selection "hasn't gone anywhere," so reformers' "emphasis should be on the system we have."[147]

In November 2009, Moyer, facing mandatory retirement at age seventy, held an event called "A Forum on Judicial Selection: A Time For Action," co-sponsored by the OSBA and the LWVO Education Fund.[148] Its most prominent participant was to be retired U.S. Supreme Court Justice Sandra Day O'Connor—an outspoken opponent of judicial elections—but she had to cancel at the last minute when her husband passed away.[149] The *Dayton Daily News* reported before the event that Moyer "wants to develop a system that removes the perception that money determines the outcome of cases, but he isn't prescribing a solution." Instead, the paper said, "He wants participants at the forum to work on that."[150]

The "solution" Moyer and his co-sponsors announced immediately upon the two-day event's conclusion could have surprised no one: they favored "merit selection" for Ohio Supreme Court justices, with a nominating commission, appointment by the governor, and retention elections.[151] Moyer said that they would propose plan specifics in 2010[152] and that he hoped state legislators would take action to put the measure on the ballot, which would avoid the need to gather petition signatures.[153]

Soon after Moyer's announcement, several of his Supreme Court colleagues on the bench distanced

themselves from the proposal. Justice Evelyn Lundberg Stratton opposed the plan in a nineteen-page report she sent to her colleagues. Justices Maureen O'Connor and Judith Ann Lanzinger also stated that they favored maintaining the current system. Justice Paul Pfeifer did not support or oppose Moyer's plan in as many words, but he did tell the *Dispatch* that "this idea is going nowhere."[154] The other two Republican justices, Terrence O'Donnell and Robert Cupp, have not commented publicly, nor, it appears, has Moyer's Democrat successor, Chief Justice Eric Brown.

As of this writing, the OSBA and LWVO have said little more about their proposal since the initial announcement. Undoubtedly their efforts were dealt a significant setback when Chief Justice Moyer died suddenly on April 2, 2010.[155]

A Return to Partisan Elections?

The latest merit-selection proposal may be on hold for the moment, but judicial selection recently returned to the news due to a 2010 decision from the U.S. Court of Appeals for the Sixth Circuit, *Carey v. Wolnitzek*.[156] In that case, a Kentucky judicial candidate challenged that state's Code of Judicial Conduct, which prohibited candidates from declaring their political party affiliation, directly soliciting campaign funds, or making statements that appear to commit them "to rule a certain way in a case, controversy, or issue that is likely to come before the court."

The judicial-candidate plaintiff based his challenge on a 2002 U.S. Supreme Court decision, *Republican Party of Minnesota v. White*, which struck down a provision that prohibited Minnesota judicial candidates from announcing their views "on disputed legal or political issues."[157] The Supreme Court, applying the standard of "strict scrutiny," held that the Minnesota provision violated the First Amendment, concluding that the state's desire to preserve judges' impartiality couldn't justify the restriction on speech. The Court, in an opinion by Justice Antonin Scalia, noted that the provision did not foster judicial impartiality because it pertained to issues, not to particular parties who might come before a court.[158] The Court also rejected the idea that the provision is necessary to prevent a "preconception in favor of or against a particular *legal* view" because a lack of preconceived ideas about legal issues by a judge is "neither possible nor desirable."[159] Scalia added that "pretending otherwise by attempting to preserve the 'appearance' of that type of impartiality can hardly be a state interest, either."[160]

In *Carey*, the Sixth Circuit held that Kentucky's regulations—at least the provisions regarding political parties and soliciting campaign funds—must fall under *White*. (The Sixth Circuit remanded to the district court for further consideration of the other challenged provision.)

In an opinion by Judge Jeffrey Sutton, the court concluded that Kentucky's restriction on stating one's party affiliation prohibited speech just as the regulation in *White* had because it restricted candidates' ability to state their views on issues. Party affiliation "after all is nothing more than an aggregation of political and legal positions, a shorthand way of announcing one's view on *many* topics of the day."[161] So if the restriction in *White* had to fall, so did this one.

The Court added: "[W]hile political identification may be an unhelpful way to pick judges, it assuredly beats other grounds, such as the all-too-familiar relevant ground of running candidates with familiar or popular last names. In that respect, this informational ban increases the likelihood that one of the least relevant grounds for judicial selection—the fortuity of one's surname—is all that voters will have to go on."[162] Indeed, the court's comments on the relative relevance of party labels in judicial selection were well-founded; some scholars have long noted that the removal of partisan labels from the ballot in Ohio and elsewhere deprived voters of valuable information and had decreased voter participation in judicial races.[163]

The Sixth Circuit also invalidated Kentucky's ban on solicitation of funds by judicial candidates as a violation of the First Amendment. The court said there were at least two circumstances where the state might have an interest in stopping candidates from soliciting money: in face-to-face settings, and where the solicited person has a case pending before the court. Because the Kentucky provision banned *all* solicitation, however, it swept too broadly and could not stand.[164]

In response to the Sixth Circuit's decision, the Ohio Supreme Court changed its own rules for judicial

campaigns. The court changed Ohio Rule of Judicial Conduct 4.2(B) to strike a prohibition on candidates identifying or advertising themselves as members of a political party during a general election campaign. A comment to the Rule was revised to state that, despite the change, "a judicial candidate should consider the effect that partisanship has on the principles of judicial independence, integrity, and impartiality."[165] The court also altered its rules on judicial candidates' solicitation of funds to conform to the limits approved in *Carey*.[166]

Newspaper editorials noted this development's potential impact on judicial selection in Ohio. The *Dispatch* predicted that "much-livelier [sic]" elections could result and that this would rekindle the debate over judicial selection.[167] The *Plain Dealer* warned that it could lead to "wild electioneering" that might send Ohio fleeing (the paper hoped) to an entirely new selection method.[168] At this writing, a federal lawsuit is pending, filed by the Democrat Party and others, seeking to overturn the Non-Partisan Judiciary Act and place party labels by judges' names on the ballot.[169]

Conclusion

If the OSBA and LWVO follow through with another campaign, there are historical reasons to believe it would not be successful. As Ohio constitutional scholars Michael Solimine and Richard Saphire have observed, the movement to abolish elections "has not been driven by widespread signs of dissatisfaction among the citizenry at large; instead, it has been kept alive by the persistent opposition of certain interest groups to an elected judiciary."[170] Advocates of the Missouri Plan suggest their time has come by pointing to a recent well-publicized study showing that Ohio had some of the nation's costliest judicial campaigns in the past decade[171] and to surveys showing that most Ohioans believe campaign contributions influence judicial decisions.[172] But there is little evidence that Ohioans are so disturbed by these things that they're willing to give up their right to vote for judges. In fact, a September 2008 poll showed that 42% of likely Ohio voters "strongly approve" of Ohio's existing method of selecting judges and 41% "somewhat approve."[173]

Judicial candidates in recent years haven't been creating the kind of controversy that is likely to make voters want to change the system. So far the 2010 Supreme Court races have been non-controversial compared to those of 2000 and 2002, and all candidates for the two contested seats have signed a "clean campaign pledge" created by the OSBA in which they have promised to disavow any third-party advertisements that "impugn the integrity of the judicial system or the integrity of a candidate for Supreme Court."[174]

History shows that Ohioans place a very high value on their ability to hold officials democratically accountable—so high that they apparently have been willing to pay the price of occasional negative campaigns or candidates and the perceived influence of campaign donations. History also shows that the organized bar, the League of Women Voters, and others opposed to elections are exceptionally passionate and perseverant with respect to this issue—so whether they move forward at this time or not, it is safe to predict that the story of the struggle over judicial selection in Ohio is far from over.

Endnotes

1 Jacob H. Huebert is an attorney practicing in Columbus, Ohio, an Adjunct Professor of Law at Ohio Northern University College of Law, and the President of the Columbus Lawyers Chapter of the Federalist Society.

2 Barbara Terzian, *Ohio's Constitution: An Historical Perspective*, 51 Clev. St. L. Rev. 357, 357-58 & n.10.

3 *Id.* at 358 (quoting Letter from Arthur St. Clair to James Ross (Dec. 1799), *in* 2 The St. Clair Papers: The Life and Public Service of Arthur St. Clair 482 (William Smith ed., 1882)).

4 *Id.* (quoting Letter from Winthrop Sargent (Territorial Secretary) to Timothy Pickering (Aug. 14, 1797), *in* 2 The Territorial Papers of the United States 39 (Clarence Carter ed., 1934)).

5 *Id.*

6 *Id.* at 358-59.

7 *Id.* at 362.

8 *Id.*

9 *Id.* at 364.

10 *Id.* at 365.

11 Jefferson wrote in 1816: "It has been thought that the people are not competent electors of judges learned in the law. But I do not know that this is true, and, if doubtful, we should follow

principle." Letter from Thomas Jefferson to Samuel Kerchival (July 12, 1816), *in* 4 Memoir, Correspondence, and Miscellanies, from the Papers of Thomas Jefferson (Thomas Jefferson Randolph ed., 2d ed. 1830), *available at* http://www.gutenberg.org/files/16784/16784-h/16784-h.htm.

12 Lee Epstein, Jack Knight & Olga Shvetsova, *Selecting Selection Systems*, *in* Judicial Independence at the Crossroads: An Interdisciplinary Approach 198 (Stephen B. Burbank & Barry Friedman eds., 2002).

13 *Id.* at 197.

14 *See* Samuel Latham Grimes, Comment, *"Without Favor, Denial, or Delay": Will North Carolina Finally Adopt the Merit Selection of Judges?*, 76 N.C.L. Rev. 2266, 2271-72 (1998). Ohio specifically considered and rejected the example provided in the 1792 Tennessee Constitution, which mirrored the federal selection method. Francis R. Aumann, *The Selection, Tenure, Retirement and Compensation of Judges in Ohio*, 5 U. Cin. L. Rev. 408, 408 (1931).

15 *See* Steven H. Steinglass & Gino J. Scarselli, The Ohio State Constitution: A Reference Guide 17 (2004).

16 Francis J. Amer, *The Growth and Development of the Ohio Judicial System*, *in* 1 A History of the Courts and Lawyers of Ohio 194 (Carrington T. Marshall ed., 1934).

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18 Kermit L. Hall, *The Judiciary on Trial: State Constitutional Reform and the Rise of an Elected Judiciary, 1846-1860*, 44 Historian 337, 337 (1983).

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20 *Id.* at 224.

21 Steinglass & Scarselli, *supra* note 15, at 189.

22 *See* Terzian, *supra* note 2, at 370-72.

23 The Whigs attempted to block a constitutional convention for years, and it only happened because a coalition of Democrats and Free-Soil Party members put a constitutional referendum before voters. *Id.* at 370.

24 I Report of the Debates and Proceedings of the Convention for the Revision of the Constitution of the State of Ohio 687 (1851) (remarks of Henry Stanbery); *id.* at 696 (remarks of Samson Mason).

25 *Id.* at 687 (remarks of Henry Stanbery).

26 *Id.* at 696 (remarks of Samson Mason).

27 *Id.*

28 *Id.* at 685 (remarks of Peter Hitchcock).

29 *Id.* at 698 (remarks of Charles Reemelin).

30 *Id.* at 699 (remarks of Charles Reemelin).

31 *Id.* at 687 (remarks of Henry Stanbery).

32 *Id.* at 702 (remarks of Simeon Nash).

33 *See* Hall, *supra* note 18.

34 Steinglass & Scarselli, *supra* note 15, at 29.

35 Terzian, *supra* note 2, at 379.

36 *Id.* (citing 2 Charles B. Galbreath, History of Ohio 78-79 (1925)).

37 Aumann, *supra* note 14, at 411-12.

38 Brian T. Fitzpatrick, *The Politics of Merit Selection*, 74 Mo. L. Rev. 675, 677-78 (2009).

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42 *See id.* at 349-50.

43 Aumann, *supra* note 14, at 412.

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49 *Id.* at 414-15 n.22 (quoting Walter T. Dunmore, *Cleveland Bar's Influence in Judicial Elections*, 12 J. Am. Jud. Soc. 178 (1929)).

50 *See* Susan B. Carbon & Larry C. Berkson, Judicial Retention Elections in the United States 2-3 (1980).

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58 *Id.* at 375 (remarks of Robert Wilkin).

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62 *See* Fred J. Milligan, *The Proposed Change in the Selection and Tenure of Judges in Ohio*, 4 Ohio St. L. J. .157, 162-64 (1938).

63 *Id.* at 166-70.

64 *Id.* at 170.

65 Solimine & Saphire, *supra* note 56, at 219.

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69 *Id.* at 198.

70 *Id.*

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74 *Id.*

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78 Chief Justice Frank Celebrezze is not to be confused with his uncle Anthony Celebrezze, who served in the Kennedy and Johnson Administrations and later on the U.S. Sixth Circuit Court of Appeals; nor with his brother James Celebrezze, who also served on the Ohio Supreme Court during this time period; nor with the numerous other members of the Celebrezze family who have been involved in Ohio law and politics.

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106 Roger K. Lowe, *They Weren't Niggling Issues to Ballot Board*, Columbus Dispatch, Aug. 18, 1987, at 1D.

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