

Opinion

The Judicial Branch Make Real Improvements

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With all the focus on presidential candidates for 2008, the 2006 election seems long ago, even though only a few months have gone by. Those of us who are concerned about maintaining fair and impartial courts should consider the results of three initiative proposals that were rightly perceived by voters as unnecessary challenges to the judicial branch of government. All three were defeated, but they represent the beginning, not the end, of the story.

The most absurd was the proposal in South Dakota, tagged “Jail 4 Judges” (“Jail” standing for Judicial Accountability Initiative Law). It would have eliminated judicial immunity—and even allowed taking away a judge’s job and earned retirement benefits—if a committee of laypeople, set up as a special “grand jury,” concluded the judge had been wrong. Oregon’s proposal would have set up geographic districts from which members of its Supreme Court had to be elected in an attempt to limit the number of Portland-area judges; Colorado’s proposal would have established a 10-year term limit for appellate judges.

In each case, the proposal was touted as a way to hold judges accountable. In each case, with appropriate public education, the public saw through the veneer. But it takes a substantial educational effort to defeat these superficially attractive proposals.

Take Colorado’s proposal for term limits as an example. Colorado already had term limits for legislators and governors—why not for judges? The public likes the idea of term limits: An initial poll in May 2006 showed the term-limit proposal for judges supported by a margin of 69% to 24%.

Term limits would have a much different impact on the judiciary, however, than on the other branches. The legislative and executive branches have taxing and spending power and a direct relationship with the voters. The judicial branch gains its authority through professional training, wisdom, and experience. Forcing appellate judges off the bench when they had gained wisdom and experience would leave the judiciary less able to defend the rights of the people—under the Constitution—against encroachment by politically motivated legislators and officials.

Some Steps Toward Real Reform

Proponents of measures like the ones on the ballot last year are already looking to the next election. In Colora-

do, the chief term-limits proponent has already said he’ll be back with a revised proposal in 2008. Judges, lawyers, and those interested in preserving fair but accountable courts need to take more steps that will make it even harder for these efforts to gain traction.

First, more should follow Colorado’s lead in providing a statewide judicial performance evaluation for all judges. Those evaluations, prepared by a state-chartered commission, are based on direct observations and surveys of litigants and jurors who have appeared before the judge—not just lawyers evaluating other lawyers. There are only six other states—Alaska, Arizona, Kansas, New Mexico, Tennessee, and Utah—that now do what Colorado does in providing an official and public performance appraisal of its judges.

Second, we must explore ideas to improve our effectiveness, including the public’s satisfaction with its experiences in court. For example, Kevin Burke, a trial judge in Minneapolis, many years ago brought social scientists into the local court there to observe the proceedings. In work that continues today, the courtroom behavior of individual judges is studied and feedback is given to them for self-improvement on matters like listening skills and the treatment of litigants. New York University psychology professor Tom Tyler and others have shown that people comply with and accept court judgments when they feel they were treated fairly. More courts and court systems should work with empirical data to evaluate their own effectiveness.

Third, we must hold ourselves and our colleagues accountable. Outsiders looking at Congress certainly concluded that members who knew about Mark Foley failed to take appropriate actions in response. No one likes to tangle with a colleague, but we have a responsibility as public officials to keep our own house in order. Lawyers, judges, and the public all have a role to play here.

Last, we must be open to the suggestions of others for improvement. When he was chief justice of Arizona, Thomas Zlaket invited various groups to meet with him and other justices so that their concerns could be heard. They met with victims’ rights groups and with court critics. They listened—and worked to respond to complaints found reasonable.

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