

the court, and from businesses that often appear before the court as defendants." Senator Fountain Odom (D-Mecklenburg), a sponsor of a judicial reform bill, notes that such contributions tend to corrupt the image of an impartial judiciary. (See Table 5 on p. 86 for a list of salaries for N.C. judges.)

N.C. Chief Justice of the Supreme Court Burley Mitchell Jr. endorses reform of the judicial selection system. In an address to the 1995 Gen-

eral Assembly, he noted that (1) strongly contested partisan elections have led to more expensive and time-consuming races; (2) the Supreme Court was required to cancel court in November and December of 1994 after two justices were defeated, the third such cancellation in the past ten years resulting from partisan sweeps; and (3) all the judges in the state adopted a 1994 resolution endorsing an appointive system for judges.¹⁰

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Legislature Considers Courts Panel's Recommendation to Install Merit Selection in N.C.

by Tom Mather

When lawmakers rewrote the North Carolina Constitution in 1868, one of their key reforms was to let voters elect state judges for the first time. But today, most voters don't realize they have that responsibility or they don't exercise it, a recent survey shows. And now that reality has led a judicial reform panel to recommend that the state scrap its 129-year-old system of choosing judges through partisan elections and replace it with a type of merit selection.

"[M]ost voters do not even know that judges are elected and only a handful can recall an individual judge for whom they cast a ballot," states a recent report by the Commission for the Future of Justice and the Courts in North Carolina, a panel established in 1994 by then-Chief Justice James Exum to find ways to improve the state's legal system.¹ One of the commission's key recommendations was that the state replace its partisan judicial elections with a form of merit selection combined with periodic retention elections.

The commission's recommendations were incorporated into legislation introduced in the 1997 session of the N.C. General Assembly.² Because the legislation would change the State Constitution, to become law it would need to pass the N.C. House and Senate by three-fifths votes and then be approved by voter referendum at the next general election. Under the proposed

legislation:

- All judges would be appointed by the governor from nominees submitted by politically neutral, blue-ribbon judicial panels.

- New judges would stand for retention votes at the first general election occurring more than a year after their appointments.

- Judges retained by voters would serve eight-year terms, with additional retention elections at the end of each term.

- All judges would be subject to regular performance evaluations by neutral judicial panels, and those evaluations would be made available to the public before retention elections.

- Clerks of court would be appointed to four-year terms by the chief circuit judges in their districts from lists of nominees submitted by panels of local lawyers, county commissioners, and other citizens.

The current method of selecting judges through partisan elections has limited the independence and accountability of judges, while eroding public confidence in the judicial system, the Futures Commission concludes. "The public cannot have confidence in the fairness of decisions when judges must raise large sums in campaign funds from lawyers and other interest groups," the commission states. "And many lawyers who would make excellent

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Courts Panel Recommends, continued

judges will not consider the office because of the political demands."²

The commission based its recommendations, in part, on a statewide survey it conducted in 1995. That survey found that less than half (40 percent) of the respondents knew that the state Supreme Court is an elected body. Although 60 percent said they participated in the 1994 general election, only half of those voters recalled casting a ballot for any judges. Of those who did recall voting for a judge, most (78 percent) could not name a single judge on the ballot.³ [Actual totals from the 1996 general election show that about 92 percent of those participating voted for the contested seats on the N.C. Supreme Court and the N.C. Court of Appeals.⁴]

"These findings suggest that the public accountability supposedly gained through elections is a myth," the commission report states.⁵ "... If judges need to consider only voters' approvals, they are not accountable to their superiors—who are in a better position to know how well they perform their jobs."⁶

The commission acknowledges that "eliminating all participation by voters could result in an isolated judiciary with no real check on its power," but says that possibility could be prevented through the use of retention elections and performance evaluations. "Retention elections provide an opportunity for voters to say 'yes' or 'no' on whether a judge should continue in office at the end of his or her term," the commission states. "If accompanied by published evaluations of judges' performance by a neutral body, this kind of election would provide an effective means of removal of those appointed judges who are unsuited for the office."⁷ □

FOOTNOTES

¹ *Without Favor, Denial or Delay: A Court System for the 21st Century*, report by the Commission for the Future of Justice and the Courts in North Carolina, Raleigh, N.C., December 1996, p. 32. The commission, a 27-member non-partisan panel of citizens from across the state, based its study on findings from monthly meetings, public hearings, a statewide survey of voters, focus groups, a survey of all sitting judges in the state, and consultations with judicial experts in North Carolina and other states. In addition to its proposals dealing with merit selection of judges, the commission made a series of recommendations for streamlining court structure, strengthening governance, modernizing information systems, improving case management, and increasing the use of alternative methods of dispute resolution. The commission was led by Chair John Medlin, chairman of Wachovia Corp., and vice chairs Rhoda Billings, a former chief justice and current law professor at Wake Forest University, and retired Superior Court Judge Robert Collier. Grants from the Z. Smith Reynolds Foundation of Winston-Salem and the U.S. Department of Justice (via the Governor's Crime Commission) helped fund the commission's study.

² House Bills 741 and 742 and Senate Bills 834 and 835.

³ *Without Favor, Denial or Delay*, note 1 above.

⁴ *Ibid.*, p. 8. The commission's survey, conducted by Wilkerson & Associates of Louisville, Ky., was based on telephone interviews of 805 adult North Carolinians in August 1995. It had a margin of error of about +/-3 percent. With regard to the state Supreme Court data, the specific question was: "... I am going to read you a list of the types of officials who work in the North Carolina Court System. For each one, tell me if you think they are elected by the voters, or not elected, but appointed. The first one is the Supreme Court. Are these officials elected or appointed?" With regard to the percentage of voters who recalled voting for judges, the specific questions were: "Did you personally vote in the November, 1994 General Election? ... In the November 1994, General Election—did you personally vote for a candidate for judge, or not? ... Do you remember the name of any judge that you voted for?"

⁵ Totals compiled by the State Board of Elections show that of the voters participating in the 1996 elections, 92.8 percent voted in the race for chief justice of the N.C. Supreme Court, 92.6 percent voted in the race for associate justice, and 91.5 percent voted for the contested seat on the N.C. Court of Appeals.

⁶ *Without Favor, Denial or Delay*, note 1 above, p. 8.

⁷ *Ibid.*, p. 32.

⁸ *Ibid.*

"The public cannot have confidence in the fairness of decisions when judges must raise large sums in campaign funds from lawyers and other interest groups. And many lawyers who would make excellent judges will not consider the office because of the political demands."

— COMMISSION FOR THE FUTURE OF JUSTICE AND THE COURTS IN NORTH CAROLINA
IN *WITHOUT FAVOR, DENIAL OR DELAY: A COURT SYSTEM FOR THE 21ST CENTURY*