Article Review

CJUS 500

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Abstract

Over the year’s individuals across the states have increasingly become concerned with some of the factors related to the campaigning and the ways of judicial elections in America. The following provides a summary of two articles related to these concerns. The articles are titled *ARE CAMPAIGN CONTRIBUTIONS COMPROMISING THE INDEPENDENT JUDICIARY* and *Reform from within: Positive Solutions for Elected Judiciaries.* Both of these articles explore some of the concerns many seem to have regarding elected judges versus appointing judges by merit. Many feel that the large contributions made by lawyers and other business affiliations who play some type of role within the court may contribute to extreme unfairness within the courtroom and the outcomes of cases presented. The following will explore this major concern as well as other concerns and the possible solutions for improvements in judicial elections based on the information provided in the two articles. A brief summary of the most important points made in each article will be provided.

**Summary**

The articles *ARE CAMPAIGN CONTRIBUTIONS COMPROMISING THE INDEPENDENT JUDICIARY* and *Reform from within: Positive Solutions for Elected Judiciaries* both explore aspects of campaigning and electing judges. Both articles discuss the negative aspects of judicial elections however, *Reform from within: Positive Solutions for Elected Judiciaries* also discusses some positive aspects. Each article also discusses some of the changes that would make the system more positive whether appointed or elected.

*ARE CAMPAIGN CONTRIBUTIONS COMPROMISING THE INDEPENDENT JUDICIARY* suggeststhat the amount of money that is being spent on judicial elections has greatly increased over the years. According to the author Adam Skaggs (2010) “campaign spending poses serious threats to our state courts -- especially in Texas, one of only four states in which all trial and appellate judges run in contested, partisan elections both initially and for subsequent terms” (Skaggs, 2010). There appears to be evidence suggesting that as campaign spending increases judge impartiality decreases. According to the article running candidates raised approximately 206 billion dollars in over 20 states that have competitive elections. This is over double the amount raised in the previous decade. (Skaggs, 2010). Despite this recent increase, increases have been noted in Texas in prior years.

The majority of campaign funds appear to come from potential litigants, lawyers, and other special interest groups. The article examines the problems this creates within the courts. Multiple studies have suggested that those who contribute large amounts to the campaigns do better by the judge than those who do not contribute. According to Skaggs (2010) “A recent study of the Texas Supreme Court, for example, found that the more money a petitioner contributed to the justices, the more likely it was that the court would accept a petition for review”. Another study including all fifty states suggests that judges elected tend to act in favor of those contributing as the contributions to the campaign continue to increase from them (Skaggs, 2010). While these studies do not provide proof that there is indeed a relationship between campaign contribution and outcomes they do suggest that the contributors do gain an advantage in the courtroom that is unfair. The article suggests three possible solutions to help improve the current system. These include; using appointment and retention elections, campaigning with public financing, and making stricter rules for disclosure of campaign contributions and judicial disqualifications (Skaggs, 2010). Adopting these solutions would most likely help with judge impartiality.

The article *ARE CAMPAIGN CONTRIBUTIONS COMPROMISING THE INDEPENDENT JUDICIARY* also suggests that there are issues within the current system. People are aware of the issues within however they still prefer the ability to elect their judges regardless of the fact that “83% of Texans doubt that a judge who has received campaign contributions from a lawyer or Litigant will remain neutral when deciding the donor's case” (Jefferson, 2010). Jefferson (2010) explains that people tend to elect judges based on high dollar campaign advertisements rather than the actual reputation of the judge. Despite this it also claims that the pricey campaigns and elections decrease the public’s confidence in America’s courts. According to the article by adopting a system where the judge is appointed would eliminate much of the negative. Such a system would still include politics but would make other factors such as the candidate’s work ethic, qualifications, and other factors a higher importance in the process. These factors would play a much larger role than the politics involved.

The elected judge plays a role in the legislature as well as a direct link to their community which the author refers to as “assets” (Jefferson, 2010). Jefferson (2010) states that the elected judge and legislature have shared attribute, which allows the judge to highlight and heighten awareness about inadequacies within the justice system. The author uses the Judiciary Addresses given by the chief justice in most states. An elected judge may have a stronger link with community than an appointed judge because they are motivated to earn the support and votes of the community and also because of the broad speech protections (Jefferson, 2010). The elected judge as more accountability to the community because of these factors. The author expresses concern regarding the broad speech protections stating “this development may give voice to the view that judges improperly engage in policy debates that should remain the province of the legislature and other elected officials” (Jefferson, 2010). However, the broad speech protections also gives judges the ability to take part in discussions that are apolitical yet have salutary purposes which give way to resources within the court to be increased, to protect those who face risky access to justice, and to justice system reform.

Both articles suggest that improvements within the system would be made if all judges were appointed by merit. The first article strongly suggests that the funding of such campaigns does not have many positive aspects. Such funding is shown to influence the judge’s impartiality which results in an extreme unfairness within the criminal justice system. While the second article also describes the many negatives of such an election is also acknowledges that there are some aspects to consider when adopting a system of being appointed by merit. The article suggests that “as we continue to urge states to appoint judges be merit, we should salvage from the current system those attributes that have the potential to improve the administration of justice” (Jefferson, 2010).

References

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