

POLITICS AND JUDICIAL INDEPENDENCE: A PROPOSAL FOR REFORM OF JUDICIAL SELECTION IN OREGON

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In the recent election for a seat on the Oregon Court of Appeals, there were claims levied, largely but not exclusively on the side of the incumbent, that the process was being improperly politicized. These claims were founded not on the content of the challenger's campaign, but rather on who the challenger was and whom he had represented as a lawyer. Had the challenger been a lawyer whose career had been devoted to trusts and estates or some equally uncontroversial area of legal practice, perhaps there would have been less controversy; but even then, a challenge to a sitting judge would have been viewed by many as a breach of the unspoken understanding in the bar that one does not run against a clearly competent, sitting judge.

As I indicated in an opinion piece in the *Oregonian*,¹ I find this reaction to the challenger's campaign both puzzling and disturbing. It was puzzling because in Oregon we have chosen to elect our judges. Elections are largely meaningless without competing candidates and are, by their nature, political. In Oregon we describe our judicial elections as nonpartisan, but there is no small amount of nod and wink in doing so. Even if the voters cared only about electing the person best qualified to be a judge, it would be partisan in the sense that each candidate will claim to be more qualified than the other.

Oregon Supreme Court Justice Paul De Muniz has urged that judicial elections might be less partisan if voters come to understand that "judicial restraint, courage and dedication to enforcement of the rule of law" are "of much greater and enduring importance than are campaign promises that pander to vocal special interest groups."² But does anyone really believe that voters who care (as the system now works, such voters are relatively few in number) care only or even primarily about the professional qualifications or independence of the candidates, or that they can be educated to care about these qualifications?

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1. James L. Huffman, *Politics Already a Part of Judicial Selection*, OREGONIAN, May 12, 2002, at F5.

2. Paul J. De Muniz, *Politicizing State Judicial Elections: A Threat to Judicial Independence*, 38 WILLAMETTE L. REV. 367, 396 (2002).