

California Judicial Elections

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1. Op-ed by California attorney George M. Kraw argues against the use of merit selection for state judges. Kraw asserts that all merit selection proposals boil down to the same essential point: “The voting public is not qualified to choose judicial candidates.” According to Kraw, merit selection systems proposed by both the American Judicature Society and the American Bar Association harbor the “naïve hope” that removing the selection power from voters will take politics out of the judicial process. According to Kraw, “[Merit selection] doesn’t eliminate ideology or politics from the selection process; it simply submerges these issues into a debate about credentials.” Furthermore, he adds, “[Merit selection] favors stealth candidates who never speak or write publicly about their political, social or philosophical views.” George M. Kraw, *Debunking the Myths of Merit Selection*, Law News Network, March 24, 2000.
2. Editorial argues that recent allegations against California Supreme Court Chief Justice Ronald M. George accusing him of giving retired judges trial assignments after accepting their campaign contributions are unfair because the practice does not violate any state regulations. The editorial also asserts that simply granting trial assignments to judges who contributed to the justice’s campaign should not raise eyebrows. The editorial states, “to us at least, there needs to be more to the story for it to be a story. We’d like to know whether any judges complained about not getting assignments, or whether contributors to George’s campaign were more likely to be assigned cases.” According to the editorial, the chairman of the state Senate Judiciary Committee commented that George’s actions serve to highlight an inherent flaw in judicial elections. The editorial concludes that any action against George would be “nutty,” since he has at no other time been accused of any breach of ethics or fairness.” *Half a Story*, S.F. Examiner, May 10, 2000.
3. Column finds that both the candidates for the Sacramento, Ca. Superior Court election have launched ethically questionable campaigns. In California, where the cost of a judicial campaign has increased 23-fold since 1976, the columnist finds that judicial candidates must “walk a precarious line between selling themselves to voters -- but not selling out their judicial discretion.” According to the columnist, candidates Trena Burger and Don Steed have both used “code language” to subtly inform voters of their judicial philosophies. Steed has circulated fliers asking, “Which candidate do you trust to support your gun rights?” while Burger’s ballot statement proclaims that she will “enforce the death penalty and three-strikes you’re out.” The columnist concludes that voter apathy may be the result of such covert signals: “more than 58,000 voters skipped right over the judge’s race without making a selection at all. Maybe they didn’t really know the candidates. Or maybe they’d heard enough.” Marjie Lundstrom, *No*

- Ethical Missteps, Pair Running for Judge Insist*, Sacramento Bee, September 10, 2000.
4. Column decries the role of money in California judicial elections: “the thought of essentially buying the right to decide the fate of lives, liberty, and property is, to understate the matter, troubling. And when . . . the money comes from lawyers and institutions that often appear in court, the system emits a whiff of impropriety.” The columnist applauds state Supreme Court Justice Ming Chin for planning to attend December’s conference of state Supreme Court Justices to discuss judicial elections. Although California judges are usually appointed by the governor, trial court judges occasionally face challengers for election and higher-court judges face retention elections. Trial court judges typically spend several hundred thousand dollars per campaign and appellate and supreme court justices spend nearly \$1 million. To combat the growing power of money, the columnist endorses law professor Gerard Uelman’s suggestions that elections be held in non-gubernatorial election years and that judges be appointed to 12 year terms. Reynolds Holding, *Judicial Candidates Buy Way to Bench*, San Francisco Chronicle, October 1, 2000.
 5. Article reports that a Sonoma County, California, judge is being investigated for possible ethical violations concerning her unsuccessful re-election campaign last year. Running against Elliot Daum, a public defender, Judge Patricia Gray criticized Daum for defending an individual accused of killing a police officer and later sentenced to death. Her campaign mailed out flyers showing a photograph of a police officer with the legend, “Cop Killer,” at the bottom of the page and the note “Now Elliot Daum wants you to elect him judge.” It then noted that Daum had first sought to exonerate his client of all charges and then moved to stop the D.A. from seeking the death penalty. The state Commission on Judicial Performance has determined that the flyer misrepresented Daum’s actions and has asked Judge Gray to respond to their formal inquiry. Pamela Podger, *Judge Probed Over Tactics in Campaign*, San Francisco Chronicle, January 4, 2001.
 6. Article reports that while a greater number of states are disciplining judicial candidates for violations, “efforts to rein in . . . campaigns have met with only marginal success in the courts” since they’re viewed as First Amendment violations. It focuses on the case of California Superior Court Judge Patricia Gray who distributed campaign mailers painting her opponent, a deputy public defender, as someone “who cares about the rights of violent criminals” and attacking him for representing, among others, a “cop killer” and a “child molester.” (See Court Pester, January 4.) In contrast, Judge Gray described herself as a “tough judge who makes criminals’ lawyers unhappy.” She lost the election and now faces disciplinary charges that could prevent her from ever taking another judgeship. In response, Judge Gray has filed suit in federal court challenging the charges as a violation of the First Amendment. Her attorney

- states, “We’re basically saying that the distribution of a campaign mailer is core political speech, which is entitled to the highest form of First Amendment protection.” Mark Hansen, *When Is Speech Too Free?*, A.B.A. Journal, May 4, 2001.
7. Article considers efforts to de-politicize California judicial elections. Last December, Assemblyman Joseph Nation proposed a constitutional amendment for the merit selection of trial judges. Such a reform, he contended, would reduce negative campaigning and lower campaign spending. However, a survey of state judges found that a majority opposed the reform. Many judges worried that campaign costs would actually increase because retention elections would allow interest groups to launch negative campaigns against judges whose decisions they find unfavorable. Currently, few incumbent judges face challengers for re-election. A state judiciary task force is now taking up the issue. Allan Ashman, director of the American Judicature Society’s Hunter Center for Judicial Selection, finds the calls for reform to be part of “an increasing outcry from states . . . to do something about these judicial elections that are ideologically tainted and so influenced by money.” Mike Kataoka, *Nature of Politics a Worry to Judges*, Riverside (Ca.) Press-Enterprise, September 3, 2001.
 8. Column laments that California’s “Superior Court judges operate unchecked. . . . Their decisions can sentence a man to death, free a violent offender or shatter a family. And yet, when elections periodically pop up, they are the least known candidates.” The columnist asserts that as a result, “the problem is that unqualified candidates often reach the bench.” Moreover, incumbents face few challengers. Of 49 seats up for election this year in San Francisco, 47 are uncontested, chiefly because, according to the columnist, judicial speech restrictions prevent challengers from making persuasive cases to the electorate. Ace Sanders, *Superior Court Judges -- Can’t Touch Them*, San Francisco Examiner, February 20, 2002.
 9. Article reports that California’s judicial discipline board has dismissed charges against a former judge charged with campaign speech violations. In rendering its decision, the Commission on Judicial Performance cited *Republican Party of Minnesota v. White*. A complaint was filed against Sonoma County Judge Patricia Gray for mailers sent out by her 2000 campaign that targeted her opponent, a deputy public defender, calling him someone “who cares about the rights of violent criminals.” (See Court Pester, May 4, 2001), Mark Geragos, who defended Gray, said the decision to dismiss the complaint is “the death knell for Canon 5.” According to the reporter, Canon 5 of the state’s code of judicial ethics prohibits judicial candidates from making statements that make clear their position on issues that could possibly come up in court. California Chief Justice Ronald George said that he has appointed an advisory committee to study possible changes to the canon. Jason Dearer, *CJP Dismisses Charges Against Sonoma*

Judge: Court Decision May Prompt Rule Changes, The Recorder (San Francisco), August 28, 2002.

10. Article reports that an analysis of California Superior Court races from 1996 to 2002 “reveals that though some spending has increased, about half of winners still spend less than \$75,000 to secure their seats.” “Median spending among winners actually peaked in 1996 at \$107,256,” dropping to \$80,568 by 2002. Los Angeles political consultant Joe Cerrell said that, although costs of filing and sending fliers have increased, “candidates still only do the bare minimum.” The article suggests that perceptions about increased spending by judicial candidates may be the result “in the growth since 1998 of ‘super spenders’ candidates who shell out more than \$200,000 on their campaigns.” In 2002, 10 percent of candidates were “super spenders.” Lucia Hwang, *The Price of Your Honor*, California Lawyer, February 1, 2004.