

Merit Selection? Democracy Demands Elections

By Judge Abbey Fishman Romanek

Judges have the power to take away a person's liberty, treasure, home, family, and all of the most precious things that matter. People are much more likely to have some contact with the court system directly or through a family member, due to a speeding ticket, a domestic relations issue, a business matter, an injury, or a criminal matter, than they will ever have with their congressman, senator, or chief executive. As a result, citizens must have the opportunity to vote for the people in the position to make those decisions most personal to them.

The arguments against voting for judges and in favor of merit selection are generally as follows: no one knows who the judges are and so no one ever votes for them anyway; if people do vote, they vote based on ethnicity or gender, and that is not the way to get the most qualified or diverse bench; and raising money in judicial races is inappropriate.

Before discussing why voting for judges is so important, it is critical to understand how we elect judges in Cook County. There are approximately 400 judges in Cook County. Approximately 250 of those judges are elected by the public as circuit court judges. About half of those judges are elected countywide and the other half are elected from subcircuits. The subcircuits were drawn by the legislature with the intent to diversify the bench. All of the elected circuit court judges elect approximately 150 associate judges. These associate judges are chosen based on merit and diversity. Every time the associate judge list opens, close to 300 lawyers apply. Each of those applicants is interviewed by a committee of presiding judges. The presiding judges pick the finalists for further interviews by all of the sitting circuit judges, who then vote.

Every judicial candidate, whether for a circuit or associate judge position, is also reviewed by 13 bar associations. Members of these bar associations volunteer their time to meticulously investigate and evaluate each candidate's background, interview each candidate and provide the public or the circuit judges with a rating of highly qualified/highly recommended, qualified/recommended, or not qualified/not recommended. This process is onerous. To ask the bar associations to do this on a rolling basis would be a huge inconvenience and conflict with their members' ability to practice law. Furthermore, rolling admission for continued merit selection would take significant court time away from the administration of justice.

Though some voters choose not to exercise their franchise when it comes to electing judges, or choose not to "do their homework" to determine who is the best candidate, that is not a reason to take the choice away from everyone. Rather, that is the reason judges need to work even harder to educate the public as to who we are and what it is we do. As discussed above, the bar associations do their part. But judges have to go out to meet the public and allow the public to meet them. The best way to do that is through the election and retention process we have in Cook County. If everything were done by a select group, judges would effectively remain in ivory towers.

Judges would not know, hear, or feel what the public thinks, sees, or feels about them. Furthermore, if judges were not elected by the public, the public would have no way of knowing who the judges are, and judges would not be accountable for their actions. Not only would this give the public a bad perception of judges, but it would not breed confidence in the court system in general.

There is an issue with the public voting for judges based only on names, genders, and ethnicity. Cook County has attempted to address this issue in three ways. The first is with the 15 subcircuits mentioned above. Those

15 subcircuits drawn by the legislature in 1991 were drawn with an eye toward diversifying the Cook County bench. Each subcircuit had a specific ethnic, political, racial, and religious demographic in mind. Those subcircuits were drawn almost 30 years ago, and those demographics have shifted over time. In fact, only one of those subcircuits was meant as the “Jewish” subcircuit. There was no vacancy in that subcircuit in 2018, yet 3 Jewish judges were elected from 3 different subcircuits just this past year. This is a good thing.

Cook County’s second attempt to address diversification on the bench is our merit selection system of associate judges. In the past, a number of diverse and minority judges have been selected based on merit. However, in 2018, not one African American judge was elected. In fact, there was a tie for last place between two African American candidates requiring a runoff.

It is true that some people vote based on names, genders, and ethnicity. The third way the state has attempted to fix this problem is to pass a law which states that if a candidate has changed their name within 3 years before an election (and not because of marriage, divorce, or being adopted), their prior name will also appear on the ballot. The gender issue is far more complicated to address. We are in a state of self-correction. The judiciary has been male-dominated for a long time. It continues to be male-dominated but is much more balanced today. Nevertheless, women vote for women. For better or worse, gender identification and gender fluidity will continue to be an issue we will encounter into future generations where it may or may not continue to be an issue.

Finally, raising money is the biggest concern used by proponents of merit selection for judges. Public finance of campaigns would solve this problem. Failing this, Illinois has done the next best thing by putting in place Canon 7 which prohibits a judicial candidate from soliciting or accepting campaign contributions except through a committee.

Encountering anti-Semitism as a judicial candidate is a common occurrence. But it is not a reason to hide judges from the public by use of only merit selection of judges. Instead, judges, like other candidates, need to turn these encounters into teachable moments. Advise ADL and the Illinois Holocaust Museum and Education Center of the encounters so they might be able to address the issue.

Suggest to people that they visit and learn how their comments and actions may be perceived so that we may all learn. We must not hide from these encounters; we must grow from them.

While neither the circuit judge election process nor the associate judge selection process is perfect, there is no substitute for public engagement, public education, democracy, and use of the voter franchise. In this time of serious attempts at major voter suppression across the country, the last thing we should be doing is disenfranchising voters from voting for the people who will be making the decisions on the most important and most personal issues that affect their daily lives. According to the Declaration for American Democracy coalition, a strong democracy is one where voting is a fundamental right and a civic responsibility. Voter suppression is a threat to that democracy.

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[Read the Brennan Center Report on Merit Selection](#)