

CIVIL BEAT EDITORIAL

Judicial Elections: A Solution Without A Problem

Legislators should reject measures that would set Hawaii on a path to elect judges.

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Sen. Gil Keith-Agaran, influential chair of the Senate Judiciary and Labor Committee, is shepherding three bills this legislative session that would take a step toward electing judges in Hawaii, rather than the appointment process currently in place.

Does anyone but Keith-Agaran think it's a good idea to drag our Judiciary into the same three-ring political circus that shrouds the election of candidates at all levels in Hawaii?

The influence of big money and special interests is the norm these days in national and other federal races and has emerged in Hawaii as well. Remember the Honolulu mayor's race in 2012 when special interests spent millions of dollars to keep anti-rail candidate Ben Cayetano out of the mayor's office?

Lowest common denominator advertising wars between super PACs and the ever more troubling lunge for pithy sound bites and media coverage inflame and distort our public discourse, to our collective detriment.



Moving to a system of electing the judges who serve at all levels, including the Hawaii Supreme Court, would unnecessarily politicize judicial selection.

Specifically, Keith-Agaran's bills call for popular-vote elections of all Hawaii judges to initial six-year terms and then Senate confirmation for judges seeking additional terms. Also required: A study of how the Office of Elections, the Campaign Spending Commission and the Judiciary would handle judicial elections.

As Civil Beat columnist [Ian Lind pointed out earlier this week](#), virtually no one thinks any of that is a good idea. In fact, a long list of respected legal leaders and organizations whose well-informed opinions we ought to value have submitted testimony sharply critical of this proposed venture into politicizing the bench, among them, the Hawaii State Bar Association, the American Civil Liberties Union of Hawaii and Common Cause Hawaii.

Hawaii's current system of judicial selection has important roots: It was put in place in the last constitutional convention held in our state, in 1978. That highly participatory convention heard and defeated multiple measures mandating judicial elections and one

to require retention votes for judges, fearing exactly the politicization of process that the bills under consideration would facilitate.

Conversely, Senate Bills [2239](#), [2420](#) and [2238](#) seem to reflect the wishes of one legislator, who to date hasn't elaborated on the case he makes for these ideas in his bills. Keith-Agaran did not return a detailed message from Civil Beat left with his staff on Thursday seeking clarification on these measures.

Within SB 2239, though, he makes a half-hearted case that there is a national trend of moving away from the kind of selection process Hawaii has now.

In that process, the Hawaii [Judicial Selection Commission](#) — members of which are appointed by the governor, the chief justice of the Hawaii Supreme Court, the state Senate president, the state House speaker and the Hawaii Bar Association — reviews and evaluates applications for any judicial vacancy in our state. It votes by secret ballot to select qualified nominees, whose names are then forwarded to the governor or the Supreme Court chief justice, whichever is making the appointment to the judgeship in question.

The “trend” Keith-Agaran cites in advocating we abandon the current process boils down to changes in judicial selection in Kansas and Tennessee and a vague reference to “efforts in other states.”

Hawaii judges are appointed to six or 10 year terms, depending on the court, and the Judicial Selection Commission reviews and makes the decision on applications of any judge seeking retention for a subsequent term.

process boils down to changes in judicial selection in Kansas and Tennessee and a vague reference to “efforts in other states.” But that seems transparent cover for what really amounts to a naked attempt to relocate power from the executive branch to the Senate, where the judiciary chair's standing would gain significantly.

The “trend” Keith-Agaran cites in advocating we abandon this

We can think of plenty of states, by the way, whose approaches to government in recent years might be emulated by Hawaii with positive results; Kansas and Tennessee

wouldn't be among them.

And if there is a clamor by voters, attorneys or others with a stake in our judiciary system to move away from a selection process that has served Hawaii well for nearly four decades, it has escaped our attention.

This is not to say that the process couldn't be improved. As [we argued in 2014](#), when voters approved a constitutional amendment requiring that the Judicial Selection Commission disclose the names of prospective judges selected as finalists and rejected one raising the judicial retirement age from 70 to 80, Hawaii voters want more control over how judges are chosen and how long they serve.

Reducing terms of six to 10 years to four to six years makes good sense — 10 years is too long a term for any public official — as does amending the constitution to provide for retention votes for judges seeking an additional term. That simple up or down vote would give voters the ability to get rid of bad judges while keeping an appropriate distance between the bench and electoral politics.

If Keith-Agaran and other lawmakers are looking for more accountability in the judicial selection process, changes like that continue to be worth exploring. But sweeping constitutional amendments to address problems that don't exist based on a dubious notion of a "trend" toward politicizing the judiciary? No thanks.

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**Alexander Eteuati** · Honolulu, Hawaii

Law protects the crooks, crooks get elected to office, office protects special interests, special interest pays for crooks, crooks appoint the law. AS RAFIKI WORKS SAY.....IT'S THE CIRCLE OF LIIIIIEES..... ONE MORE BACK ROOM DEEEAAALLLLLLONE MORE DOLLAR TO STEEEAAALLL.

Like · Reply ·  1 · Feb 26, 2016 2:54pm**Rick Tubania** · University of Hawaii at Manoa

do you folks really believe the current system of selecting judges is without deficiencies? many judges are selected because they know someone, not for their judicial excellence. we have some bad judges currently serving on the bench. one just recently make a bad decision in sentencing an embezzler and another judge involved in the deedy case made a mockery of the trial. the last supreme court judge did not appear to have the keen intellect to be a supreme court judge, nevertheless he was confirmed because of politics. then there was the judge who botched the gaming machine arrests. no system is perfect some some system might be best than others. the mere fact that most states are trending to election of judges show that they believe that system is better than what they had originally. otherwise, why would they go to an inferior system as you claim>?

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**Alan Sarhan** · Layabout at Retired!

Judicial elections are the worst idea to come down the road in a long time. The law is complicated, few voters understand what is required of the judiciary. Judges should never be in the business of making campaign promises. If some candidate promised to throw all the homeless in jail, s/he would be elected in a minute. Then every case that came before the judge would be overturned by a higher state or federal court, and in the meantime the taxpayers would be stuck with the bill for the foolish actions of that judge. Judges and lawyers know who the best minds and just temperaments are in the business. The current process isn't perfect but neither is democracy.

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