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Editorial | Our View

Protect integrity of judicial selection

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Suspicion is mounting — and so is the evidence — that members of the Legislature, perhaps unhappy with certain court rulings, are trying to weaken the independence of Hawaii's Judiciary through intrusive legislation.

Chief Justice Mark Recktenwald told the Star-Advertiser editorial board last week that the Legislature's recent efforts to drastically change how the Judiciary operates "certainly are grounds for concern for us."

Indeed. Last year, the Legislature considered ill-advised proposals that called for the election of judges; Senate approval to retain sitting judges; and a reduction in the amount of judges' pensions. All of them failed. The Legislature did, however, reject nearly all supplemental budget requests proposed by the Judiciary.

This year, the Legislature is at it again. Bills in the House and Senate resurrect a proposal to amend the state Constitution to give the Senate final authority over whether a judge or justice is approved for a subsequent term, taking that role away from the Judicial Selection Commission.

It's a bad idea. The legislation would upend a system carefully established in the 1978 state Constitution, which created the independent commission to manage the process of selecting and retaining judges and justices.

Currently, the governor or chief justice nominates a judge from a short list prepared by the commission; the Senate can approve or reject the nomination. The commission, however, decides on whether a sitting judge's term should be extended for another 6- or 10-year term.

It's a system unique among the states; elsewhere, most judges are either re-elected by voters or reappointed by elected officials. But Hawaii's farsighted reforms are better, and should be preserved.

Before 1978, the governor or chief justice would appoint the judges they wanted with the advice and consent of the Senate. Decisions about subsequent terms were made unilaterally.

Judges could be chosen based on their connections to their political sponsors; appointments and reappointments could be traded for political favors.

The legislation (House Bill 1 and Senate Bills 328 and 673) purport to make the judicial retention process more transparent and accountable to the public — a worthy goal. However, the bills would re-establish the same danger of improper influences the commission was created to avoid.

The current system employs multiple safeguards to ensure, as much as possible, that the selection and retention of judges is handled in an unbiased, consistent and thorough manner, while still giving elected officials a voice.

Six of the commission's nine members are chosen by elected officials — two by the governor and four by the Legislature. The chief justice chooses one, and the Hawaii Bar the other two.

The commissioners serve single 6-year terms, which are staggered to ensure continuity, but also fresh perspectives; a member can't vote on the same candidate for both the original appointment and retention.

The commission reviews a broad range of information — a questionnaire, public comments, interviews, surveys of lawyers, the judge's record, evaluations by the Hawaii Bar and other sources — before coming to a well-informed decision.

Under the proposed legislation, the Senate could ignore the commission's conclusions and make up its own mind.

On what basis? The politics of the moment, presumably.

Nonetheless, critics have a point when they argue that the commission's processes are too secretive. Most of the information collected is done in confidence to ensure candid responses, and remains secret after a decision is made.

The commission could crack open its vetting process to increase public confidence in its work. A recent study from the Brennan Center for Justice at New York University's School of Law offered numerous worthy suggestions. Among them: establishing more formal review procedures and measurable performance benchmarks, and providing the public with more information on how the judge met, or didn't meet, the established standards.

The integrity of Hawaii's Judiciary comes from decisions by judges and justices that are based on the law, not political pressure. This independence should be guarded, jealously.

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