

MERIT SELECTION WE NEED YOUR HELP

TOM LEVIS,
PRESIDENT

Last October, I wrote a president's letter detailing the history of Merit Selection of judges in Iowa. I told you about Harvey Uhlhopp, the father of Iowa's Merit Selection. I told you that Judge Uhlhopp was an elected judge from Hampton who hated campaigning to be a judge. He was convinced that even if judges were truly impartial, politicizing the selection of judges undermined the confidence Iowans had in their courts.

In 1958, Judge Uhlhopp wrote an Iowa Law Review article recommending that the legislature change the Iowa Constitution and adopt a new method for selecting judges, a method based on a candidate's merit and not based on a candidate's political affiliation.

In 1959 and again in 1961, with bipartisan support, the Iowa Legislature adopted Judge Uhlhopp's Merit Selection plan. Republican Senator Charles Grassley, then a member of the Iowa House, voted in favor of the Uhlhopp Merit Selection plan in both 1959 and 1961. Several years later, Senator Grassley called the vote by the Iowa General Assembly "very forward thinking." David Stanley, another Republican member of the Iowa legislature in 1959 and 1961, also weighed in on the Uhlhopp plan. In a June 2, 1962 letter to the Cedar Rapids Gazette, David Stanley wrote: "Get our judges out of partisan politics and keep partisan politics out of our courts. A judge's political party should have nothing to do with his judicial decisions."

What I didn't tell you in my October 2018 President's letter was that when Judge Uhlhopp first considered Merit Selection, he was convinced that 75 percent of Iowa's elected judges were Democrats. He was right. In the 1950's most of the elected judges were Democrats. So, when Judge Uhlhopp proposed his Merit Selection plan in 1959, he was worried that Democratic legislators might vote it down. At the time, there was a young leader in the Democratic Party named Neal Smith. Smith was keenly aware that Democrats

were winning most of the judicial elections. But Smith was also politically sophisticated and recognized that someday the tide might change. He convinced his fellow Democrats to approve Uhlhopp's Merit Selection plan.

Since 1963, Iowa's justices and judges have been selected using the Uhlhopp Merit Selection system. The Uhlhopp System uses nominating commissions to thoroughly examine the qualifications of all candidates without reference to political affiliation and then certify the best candidates to the governor, who appoints one of the individuals recommended. Over the last 55 years, these judicial nominating commissions have thoroughly examined thousands of judicial candidates. The nominating commissions have done an excellent job. According to the United States Chamber of Commerce, Iowa consistently ranks as one of the best court systems in America. Why does the business community like the Iowa Court system? Because political and special interest groups have little impact on the courts. Why does the business community like the Uhlhopp's Merit Selection System? Because Merit Selection has three great strengths: professional expertise in vetting judicial candidates, insulation of the selection process from big money and political influence and a mechanism for accountability through retention votes.

Unfortunately, change is in the wind. Despite 55 years of successfully selecting hundreds of talented judges and despite the approval of our courts by business and industry, several members of the Iowa legislature, who haven't been happy with the Iowa Supreme Court since the same sex marriage case was decided in 2009, are proposing changes to the Uhlhopp Merit Selection system. As of the writing of this president's letter, The Iowa State Bar Association does not know the specifics of the proposed changes, but anticipates that any proposed changes will likely alter the composition of the nominating commissions in a way that would, in the end, politicize the

selection of Iowa judges; a result Judge Uhlhopp and the 1959 and 1961 legislatures sought to avoid.

Being a judge requires special and specific professional skills. Being a judge requires a person of utmost fairness and impartiality. Being a judge requires someone with an excellent work ethic and the right temperament for the job. Local lawyers who work with judicial candidates in their respective communities have both individual knowledge of the candidates and specific knowledge of the job requirements. These lawyers have a professional interest in seeing to it that the most qualified candidates are appointed. That is precisely why Judge Uhlhopp wanted 50 percent of the nominating commissioners to be comprised of lawyers elected by lawyers living and practicing in the judicial district where the new judge would be assigned.

Judge Uhlhopp also recognized that citizens in the judicial district where the new judge would be assigned should also play an equal role in vetting candidates for the bench. Judge Uhlhopp proposed that these citizen commissioners live in the judicial district where the judge would be assigned and that these citizen commissioners would be appointed by the Governor and confirmed by the Senate. In Judge Uhlhopp's eyes, these citizen commissioners would represent the public.

Finally, Judge Uhlhopp thought nominating commissions should contain one senior judge/justice who would have valuable knowledge of the job duties and responsibilities and would have valuable knowledge of candidates' qualifications.

So, why is there change in the wind? What is the problem with Judge Uhlhopp's system after 55 years of selecting judges? Unfortunately there are a number of misperceptions by proponents of change. For instance one legislator wrote "judicial reform is another issue we are looking at to get the left-leaning Bar Association out of the judge selection process." Several other proponents contend that "left-leaning" Democratic lawyers control the nominating commissions and, as such,

do not allow qualified conservative candidates to get nominated. Finally, some proponents of change complain that the nominating commissions have created activist judges.

Does The Iowa State Bar Association have anything to do with nominating commissions? No, the Bar Association is not involved in the selection or operation of any nominating commission.

Lawyers who wish to serve on the State Nominating Commission are self-nominated and must secure the signature of 50 lawyers in order to be on the ballot. All licensed lawyers across the state are eligible to vote. For the District Judicial Commissions, lawyers are self-nominated and must secure the signatures of 10 lawyers to be on the ballot. All lawyers in the district are eligible to vote. Membership in The Iowa State Bar Association is not required to be on any nominating commission and The Iowa State Bar Association is not involved in the selection of nominating commissioners.

Are liberal lawyer commissioners controlling nominating commissions and forcing the Governor to choose activist judges? To answer that question, we looked at party affiliation for all current nominating commissioners. The State Judicial Nominating Commission is composed of eight appointed members, eight elected lawyer members and one senior Supreme Court justice. This commission selects candidates for the Supreme Court and the Iowa Court of Appeals. Currently, all eight of the Governor-appointed commissioners are registered Republicans. Five of

the eight elected attorney members are registered as Democrats with two lawyer members registered Republican and one registered as other. Based on simple math, the Republicans control the State Judicial Nominating Commission. If the Republican commissioners voted together, no liberal candidate could possibly be selected.

There are 14 District Judicial Nominating Commissions. Each of these nominating commissions are composed of five Governor appointed commissioners, five lawyer elected commissioners and the senior judge of the judicial district. Out of the total appointed commissioners, Governor Reynolds (and Governor Branstad) appointed 64 Republicans (91.4 percent) to these District Judicial Nominating Commissions, with no appointed Democrats, three other/independent, and three vacancies. Out of the total elected lawyer commissioners on District Nominating Commissions, 36 are Democrats (51.4 percent) and 27 are Republicans (38.6 percent). There are six Other/Independent and one vacancy. In total, 65 percent of all current District Judicial Nominating Commissioners are Republicans, 26 percent are Democrats and 6.4 percent are Other/Independents. In 12 out of the 14 District Judicial Nominating Commissions, Republicans have majority control. In the remaining two, the parties are split equally, with each party represented by five commissioners.

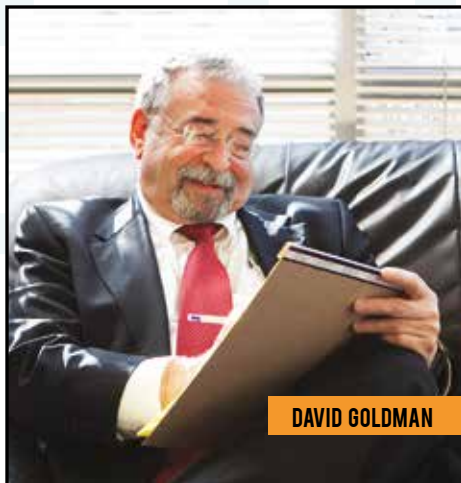
If control of nominating commissions is what the Republicans want, they already have it. But, as Judge

Uhlenhopp recognized when he proposed Merit Selection, selecting judges is not about political control. It's about merit. It's about who is the best candidate to be appointed to the bench, not the candidate with the best political resumé. Political control of nominating commissions has changed over the last 55 years, not because of the elected lawyer members, but because of the appointed members. Yet Republican Governors have selected judges who were politically aligned with the Democratic Party and Democratic Governors have selected judges who were politically aligned with the Republican Party. These Governors made their appointments because the nominating commissions did their job and recommended the best candidates to the Governor. The system works and it works well. As they say, if it ain't broke, don't fix it.

I need your help. We need to stop the Iowa legislature from making changes to Merit Selection. Unless your legislators hear objections from you, your neighbors and your business associates, substantial changes to Merit Selection will probably happen this year. Please take the time to contact your legislators. Write them a personal letter or email voicing your concerns. Enlist the support of your friends, your neighbors and your business associates. Speak to your local service clubs and churches. Let everyone know that changing Merit Selection is just plain wrong.

All Iowa school children learn about the court's role in our system of checks and balances. Children are taught that courts are the one branch of government where citizens are promised neutral ground. Please help us keep it that way.

Thank you,
Tom



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