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Keep selection system for appellate judges

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Appellate judges should not run for popular elections like general sessions judges, trial judges or district attorneys general. Few voters know who they are; fewer still know what they do.

Citizens normally do not appear in the appellate courts; their cases are briefed and argued by lawyers. Citizens do not usually know when or where the cases are presented. Most citizens have no real knowledge of how an appellate court functions or that appellate judges speak from their written opinions, agreed to by a majority of the court.

Instead of black robes, judges, particularly appellate judges, should wear black-and-white striped robes. They are essentially referees. They should not make promises about what they are going to do when they get to be a judge. They should not have a voting constituency or be concerned about getting votes.

Judges without agendas

A judge's constituency should be the law and the facts of the case as presented. Judges are not supposed to prejudge anything. Even if judges have personal beliefs about an issue, they are supposed to hang those beliefs on the coat rack where they keep their robes — before they go on the bench.

Appellate judges are even more isolated from the voters than trial judges. Appellate judges basically grade the papers of the trial courts. They make decisions about whether or not the trial court committed some kind of error that warrants reversing the case and retrying it. Or the appeals court decides (by sitting in a panel and by majority vote) whether a conviction was decided in a fair manner and if the sentence is appropriate — based on the facts and the law.

They do not retry the case, hear new witnesses, or even listen to the summation of lawyers. Most of the heavy lifting done by appeals court judges is in their offices or chambers — reading, writing, and grading papers.

While there might be some value in electing trial judges the familiar way, I think that merit selection/retention is the better approach for all judges. When you are talking about the Supreme Court or the appellate court, however, merit selection is the best way.

The voters have an opportunity to judge the judges, then decide whether to retain them or not. And, keep in mind, not each appellate judge gets retained.

For example, a Tennessee Supreme Court justice lost her retention election in 1996. The voters did not like her stand on a death penalty case. They kicked her out of office with less than 50 percent for retention. She ran. The voters spoke.
