

Testimony in Opposition to H 7641--An Act Relating to Courts and Civil Procedure--Courts--Judicial Selection

Common Cause Rhode Island opposes H 7641, which creates a “look-back” provision in the state’s judicial selection law. This bill allows the governor to fill judicial vacancies from lists created by the Judicial Nominating Commission going back five years in time. This bill violates a core concept of judicial merit selection.

Judicial merit selection was created in 1994 as a way of *minimizing* the politics in judicial selection of judges in the wake of scandals in the judicial branch. Two chief justices of our Supreme Court resigned in scandal prior to the establishment of this system. 69.9% of voters approved the constitutional amendment calling for judicial merit selection.

Article X, Section 4 of the Rhode Island Constitution calls for an independent non-partisan Judicial Nominating Commission. *Minimizing* politics in judicial selection is an important goal because justice should be administered in an impartial, non-partisan manner.

The best practices of judicial merit selection call for a board of citizens to choose a list of finalists from whom the governor picks, with the advice and consent of the Senate (along with the House for justices of the Rhode Island Supreme Court). The group most closely associated with the creation of merit selection systems, the American Judicature Society, recommends that lists be as small as possible.

The concept calls for the list to be small (3-5 in most states) and current. The Rhode Island constitution specifies that the governor can choose from “a” list, not past lists. Article X, Section 4 reads, in part, “nominating on the basis of merit, a person from a list submitted by the aforesaid judicial nominating commission.”

At present, the “look back” gives the governor of Rhode Island the largest pool of potential candidates in any of the 32 states with merit selection. By allowing the

governor to reach back we are inviting mischief and preventing the system from operating as designed.

We want small pools of candidates so that it is as transparent as possible who is being considered. We want current pools of candidates so that they are fresh. Over 5 years is a long time, and people change. A candidate may not be among the most qualified after that period of time, or something may have occurred in their life that makes them less qualified.

Beginning in 2007, during the administration of Governor Carcieri, the General Assembly granted this “look back” power. That legislation sunset each year until 2015 when it was not renewed. Since 2015 the judicial selection process has worked fine without governors having this power. This legislation not only grants the governor this power, it makes it permanent. We urge the committee to reject this legislation.