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End Judicial Elections

Business group recommends appointive systems for selecting state and local judges

WASHINGTON, D.C. August 9, 2002 – The system for electing state and local judges undermines judicial independence and impartiality and jeopardizes public confidence in our state courts. Elections encourage judges to engage in political activities that do not befit the office and provide outside interests with substantial opportunities to politicize judicial decisions and influence judicial behavior. That is the conclusion of the new Committee for Economic Development (CED) report, *Justice for Hire: Improving Judicial Selection*.

“Independent and impartial exercise of judicial authority is an essential aspect of a free society,” said Derek Bok, President Emeritus of Harvard University and co-Chair of CED’s Subcommittee on Judicial Selection. “Instead of safeguarding judges from political pressures, most election systems invite such influence.”

Over 87 percent of state appellate, trial, and limited-jurisdiction judges face some type of popular election. Thirty-nine states currently require elections for those seeking or holding judicial office. Taken together, the number of elected judges vastly exceeds the number of elected state legislators and executive officers throughout the country.

CED found that judges often rely on attorneys as principal fund-raising sources, which, at the least, creates the impression that justice is for sale. In the worse case, it subjects a judge to outside influence that may affect a ruling or lead a litigant to conclude that a donor received preferential treatment. More problematic, the 2000 election cycle found record spending levels by “issue advocacy” groups which are not subject to campaign finance restrictions.

“As business leaders, we are alarmed by these developments,” said Roderick M. Hills, Chairman of Hill Enterprises, Ltd. and co-Chair of CED’s Subcommittee on Judicial Selection. “Justice should not be a function of who serves as judge, but of the merits of the case. A fair and impartial judiciary is the cornerstone of our democracy.”

***Justice for Hire* recommends moving toward an appointment-based system for all state judges. Specifically, the report recommends that states adopt a commission-based appointment system** – such as those operating in 24 states – to recruit, review, and recommend eligible nominees for judicial office.

As an interim step, the report also provides recommendations for improving judicial elections, starting with major campaign finance reform. The report calls for full public funding for

judicial campaigns modeled on programs now operating in Maine and Arizona. Qualified candidates would receive a full subsidy equal to the amount of a set spending limit applicable to a given level of judicial office.

In addition, the report recommends:

- Reviewing current judicial salaries to ensure that appropriate levels of compensation are provided to judges at all levels.
- Ending partisan elections where judicial candidates run under a party label.
- Extending terms for trial and appellate court judges to a minimum of six years; ten years for justices on the highest court.
- In addition to campaign finance reforms, improving transparency of financial transactions and strengthening and expanding the scope of disclosure laws. Also, subjecting the expenditures of organized interests to full disclosure.
- In states that hold retention elections, establishing judicial performance evaluation commissions -- similar to those CED recommends for appointed judges -- as a means of improving the information available to voters.

“Every business leader ought to care about this issue because the business community has a stake in ensuring that judicial decisions are fair, objective and made with integrity,” added Charles Kolb, President of CED.

About CED

CED is a non-profit, non-partisan organization of more than 200 business leaders and university presidents. Since 1942, its research and policy programs have addressed the nation's most pressing economic and social issues, including education reform, workforce competitiveness, campaign finance reform, health care, and global trade and finance. CED promotes policies to produce increased productivity and living standards, greater and more equal opportunity for every citizen, and an improved quality of life for all.

For a full copy of CED's report, please call 202/296-5860 or visit www.ced.org.

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