

## Guest commentary

# Why Michiganders have lost faith in judges' impartiality

BY SANDRA DAY O'CONNOR

On Tuesday, I am speaking at a forum at Wayne State University Law School sponsored by the Michigan Judicial Selection Task Force. Formed by state Supreme Court Justice Marilyn Kelly and retired U.S. 6th Circuit Appeals Court Judge James Ryan, the task force is examining the system by which Michigan selects judges for its Supreme Court, because of concerns about record spending and vitriolic campaigning.

Michigan has earned some unfortunate national notoriety in this regard. During the first decade of the 21st Century, the amount spent on Michigan's high court elections made the state the sixth-highest spender among the 22 states that choose their judges in competitive elections. Nearly \$13 million of the \$204 million raised nationwide on such races was spent in this state.

Michigan set the record as the nation's most expensive judicial election state in 2010, when candidates and outside groups spent more than \$11 million for two seats on Michigan's highest court. A 2008 Michigan Supreme Court race enjoyed the dubious distinction of being labeled the "dirtiest" of the 26 high court contests around the country that year by the Justice at Stake Campaign.

Proponents of judicial elections argue that this is the democratic way, and that the rough and tumble is just the price of democracy. I strongly disagree. The judiciary is different, as evidenced by our U.S. Constitution, which wisely requires appointment, not election, of federal judges.

Those who serve in the executive and legislative branches of our state governments should be responsive to



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public concerns and make their political decisions accordingly. Members of the judicial branch must administer justice impartially, deciding cases solely on the basis of the facts and the applicable law — protecting individual rights and constitutional guarantees.

While we expect other elected officials to take the views of their campaign supporters into account, judges should never be beholden to any constituency. Recent surveys show approximately three-fourths of the public believe judges are influenced by campaign contributions in their decision making.

Allowing cash in our courtrooms has the potential to erode the public's confidence in the impartiality and trustworthiness of the courts. This is why I believe Michigan should move from judicial elections to a commission-based appointment and retention system. So-called "merit selection" systems can be structured to balance the need for fair and impartial courts with the need for public accountability and transparency.

In a merit selection system, an independent citizens' commission of laypersons and lawyers screens judicial appli-

cants and recommends the best qualified candidates to the governor for appointment. After a few years, judges stand in retention elections, with voters deciding whether they should remain in office.

Critics of merit selection often describe it as a process in which political elites pick judges behind closed doors. This is certainly not the case in my home state of Arizona, where the nominating commission meets in public to screen, interview and recommend judicial candidates. In Arizona, two-thirds of the members of the nominating commission are required to be laypersons, rather than lawyers, and the panel of candidates that the commission recommends to the governor must be bipartisan.

Michigan has the opportunity to shed its notoriety and shape a system that can become a model for the nation in ensuring an impartial and accountable judiciary. Michigan's judicial leaders have undertaken an important exploration of alternatives to the status quo, and I applaud their efforts.

■ SANDRA DAY O'CONNOR IS A RETIRED JUSTICE OF THE SUPREME COURT OF THE UNITED STATES. AS OF FRIDAY, THE EVENT AT WHICH SHE IS SLATED TO SPEAK WAS NEARLY SOLD OUT. FOR MORE INFORMATION, GO TO [HTTP://LAW.WAYNE.EDU](http://LAW.WAYNE.EDU).