*News Clips from the Administrative Office of the Courts*

The Public Forum on Preserving

Impartial Courts in California – July 2008

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# Jurists say judges face 'unfair political attacks' (Legal Newsline)

BY Scott Sabatini

Legal Newsline, July 10, 2008

SACRAMENTO, Calif. (Legal Newsline) -- Justice Ron Robie of California Court of Appeals pointed to a recent political ad as an example of the type of newfound pressure upon judges from special interest groups.

The ad, which pictures three judges dancing in the pocket of a businessman, says simply, "Where are my judges?" Robie told Legal Newsline this week.

"These are extremely negative kinds of advertising," Robie said.

Robie is a member of California's Commission on Impartial Courts, a wide-ranging committee broken down into four task forces, each looking for answers to what many believe is an epidemic of political pressure on judges.

"Courts throughout the country are facing unfair political attacks that threaten to weaken our democracy and jeopardize every American's right to equal access to justice," said California Supreme Court Justice Ming Chin, chair of the impartial courts commission.

Robie agrees with Chin that things have changed dramatically in recent years.

"The last several years have been extravagant campaigns against judges, sponsored by major interest groups - trial lawyers, labor, business groups - so it's the full spectrum," Robie said.

**Influence on judges**

In an interview Wednesday, Chin said that while California remains mostly free of the influences that have run rampant in some other states, the commission is determined to develop a broad range of strategies to protect the Golden State's courts.

"We don't want to take it for granted what we have now in California," Chin said.

Several other states have seen the rise of legislation that Chin believes would have a disastrous impact on the judicial branch of government.

"Jail for judges" legislation failed in South Dakota, Chin said, but the organizers of the legislation tried to also qualify it in California. Colorado faced term-limit legislation that would have removed three of the seven sitting state Supreme Courts and 40 percent of the court of appeal judges. Oregon has voted on similar legislation in recent years.

"We didn't feel that it would be prudent not to be prepared if (similar legislation was) brought to California," Chin said.

In the simplest terms, voters need to evaluate judges differently that the divisive, issue-driven campaigns familiar with other elected officials, Chin said.

He ticked off the standard for evaluating judges, including commitment to the rule of law, the ability to listen impartiality to the face of a case and then the courage to apply the law to those facts, "regardless of his or her opinion on the issue," Chin said.

But when donors wave huge piles of money to bolster the candidacy of a judge solely on party affiliation or a judge's opinion on controversial issues, it will be increasingly difficult for judges to impartially apply the law.

"The huge sum of money now required in many states in judicial elections has changed things," Chin said. "We are more concerned about the influence of money. How are you going to maintain an impartial court when judges have to raise large sums of money to get elected?"

Judges must apply the law, Chin said, regardless of their personal opinion or worse, the political pressure applied by special interest groups.

"You can't raise your hand and test the political wind. You have to apply the law," Chin said.

Robie said the increase in campaign funds in political elections "opens the door to more issue-oriented judges. It makes judicial campaigning very expensive, and it makes it difficult for judges to talk about meaningful issues to voters."

**Recommendations for California**

The Commission on Impartial Courts will hold a public hearing Monday that will include testimony from former California governors, legal experts and heads of the state bar and judges associations.

The information gathered in the hearing along with work done by the four task forces - judicial section and retention, judicial campaign conduct, judicial campaign finance and public information and education - will be presented to the Judicial Council of California for review and implementation.

Christine Patton, regional director with the administration office of the court, said an interim report will be presented to the judicial council at its Aug. 15 meeting. A final report will be due in June 2009, Patton said.

In addition to public testimony, research and recommendations from each task force, the commission will partner with the Public Policy Institute for polling data, Patton said.

Recommendations are expected to include ways to educate voters about the importance of impartial judges.

"We think the public is sort of in the dark about the judicial branch," Robie said, "and we are looking for ways to help them understand on important things to evaluate when voting."

Chin said part of that education involves properly vetting judge candidates. Several judges on ballots in recent years have been deemed "not qualified" by the Judicial Nominee Evaluation. Patton said that any judge appointed by the governor has to be deemed qualified. But many on local ballots do not.

"We are thinking of changing that," Chin said, "and making it mandatory for all who run for judge seats."

Campaign finance issues present, perhaps, the largest challenge for the commission, Chin said.
"Campaign finance is such a difficult area; It's a struggle," he said.

Patton said the campaign finance task force is hoping to weed through potential solutions to recommend the most effective ways to limit the influence of campaign funding. The forum will be held from 9:30 until noon in the auditorium of the Secretary of State Building, 1500 11th Street, Sacramento.

# Ex-Gov. Wilson seeks to spare judges from politics (Sac Bee)

**Sacramento Bee, Capitol Alert – July 14, 2008**

Former Gov. Pete Wilson believes the California state constitution should be amended to both spare judicial candidates from responding to political groups' candidate questionnaires and urge would-be judges to keep their legal views out of politics.

Wilson's novel proposal for a ballot measure "to depoliticize the administration of justice in our state courts" stirred the conversation today at a Sacramento forum for Judicial Council of California.

The group's Commission for Impartial Courts is examining whether political contributions and an increasing campaign role by advocacy groups can undermine an independent judiciary. The issue has been ignited by a proliferation of attack ads against judges in other states and a resulting increase in fundraising by judicial candidates - leaving them open to charges of political bias that could influence rulings from the bench.

Wilson, who joined former Gov. Gray Davis in addressing the panel, urged the Legislature place to an initiative on ballot to force groups seeking to elicit views of candidates for judgeships to stamp their questionnaires with a disclaimer. It would read:

"Judicial candidates are urged by...the constitution of the state of California to consciously forebear from exercising their right of free speech by refraining to answer any question...which seeks to elicit their views."

The proposed wording goes on to say that judges who respond to such political inquiries risk undermining "the fairness and impartiality of the courts of this state" and that their response could cause them from being recused from legal cases.

Appearing at the same forum, Loyola Law School professor Laurie Levenson said Wilson's proposal may conflict with First Amendment rights of freedom of speech. But she said the former governor is tapping into increasing concerns over the role of interest groups seeking to influence the make-up a judiciary that is supposed to be impartial.

"I don't like going around and constantly changing the (state) constitution," Levenson said. "But I don't like that every judge is being asked to fill out these special interest questionnaires."

Levenson warned that California judges and judicial candidates will be increasingly subjected to political attacks but could risk their appearance of impartiality on the bench if they respond.

In 2005, Sacramento Judge Loren McMaster was targeted in an unsuccessful recall over his ruling upholding California's domestic partnership law. Levenson said members of the state Supreme Court who recently ruled in favor of legalizing gay marriage may face a surge of independent attack ads - particularly if voters don't reinstate a gay marriage ban in November.

"Outside groups are going to pour money into California," she said in an interview. "If they don't win in November, they're going to attack the court."

Voters confirm state Supreme Court justices in the next general election after they are appointed by the governor, and the justices come before voters again at the end of their 12-year terms.

# Legal Scholars, Politicians Offer Proposals for Preserving Judicial Impartiality ([www.law.com](http://www.law.com))

Cheryl Miller, The Recorder and [www.law.com](http://www.law.com/)

July 5, 2008

SACRAMENTO — Californians should consider amending the state Constitution to pressure judicial candidates to stay mum about hot-button political issues that might surface in their courts, former Gov. Pete Wilson told a Sacramento gathering of judicial leaders on Monday.

The amendment, as Wilson explained it to the Commission on Impartial Courts, would acknowledge candidates' First Amendment rights but also express the public's desire that they refrain from publicly staking out positions on controversial topics. It would also require election questionnaires that interest groups send to would-be judges to include a statement, contained in red boxes on both the form and envelope, repeating the new constitutional admonition.

"Placement in the state constitution, it seems to me, is clearly warranted by the need to safeguard our courts in the administration of justice against the perils of becoming politicized," Wilson said. "I think it would go a long way toward educating the public and providing entirely proper ethical grounds for a judicial candidate to decline to answer a questionnaire."

Wilson's proposal was one of a handful that politicians and legal scholars offered on Monday to shield California from the expensive campaigns, driven by TV ads, that mark judicial contests in other states. In 2004, for instance, two dueling candidates for the Illinois Supreme Court spent $9.3 million on campaigns fueled largely by labor unions, trial lawyers and business interests, according to the nonpartisan Justice at Stake organization.

California, with a system that relies heavily on gubernatorial appointments and retention elections to fill judicial ranks, has largely escaped such intense politicking. But California Supreme Court Justice Ming Chin, chairman of the state Commission on Impartial Courts, said California needs to act now to prevent such campaign tactics from spreading.

"Even though we don't have those type of threats yet, we want to be ready in case they come knocking on our door," Chin said in an interview last week.

Chin said on Monday that the commission would consider Wilson's proposal, but he wasn't sure members would go as far as recommending a constitutional amendment. Loyola Law School Professor Laurie Levenson, another speaker on Monday, also questioned the idea.

"Call me a minimalist. I don't like going around constantly changing the Constitution," Levenson said. "But I do think it's quite outrageous that every judge I know that's running for retention election is asked to fill out one of these special interest questionnaires. I do think we should support them when they take the position of 'I'd love to but I can't.'"

The commission is already considering a proposal floated by ex-Gov. Gray Davis on Monday that all judges, whether elected or appointed, be subjected to the same rigorous review by the Commission on Judicial Nominees Evaluation. Davis recommended that JNE's ratings for elected and appointed judges be released publicly, too. Currently, the JNE Commission only evaluates the governor's judicial appointees and only releases the ratings of appointees found to be not qualified — if JNE commissioners choose to do so.

"Most people think that it's a good idea to have judicial candidates vetted statewide, not just by the local bar," Chin said after Monday's forum.

The Commission on Impartial Courts is expected to release a draft report next month, although final recommendations won't be submitted to the Judicial Council until next summer.

# Fearing backlash, judges go public (Nat’l Law Journal)

Nasty campaigns and the gay marriage ruling lead to first forum.

Pamela A. MacLean / Staff reporter
July 14, 2008



California Supreme Court Chief Justice Ronald George
Image: Jason Doiy/The Recorder

SAN FRANCISCO — The rise of nasty political campaigns targeting elected state judges nationally, coupled with the cost of judicial elections, has prompted a California' judicial commission to hold the first public forum on preserving impartial courts.

The Commission for Impartial Courts, set up by Chief Justice Ron George in September, set out to head off rancorous judicial election contests by launching public discussion of the role of judges in a forum on "Preserving Impartial Courts in California."

Two former California governors with differing judicial philosophies — Pete Wilson, a Republican, and Gray Davis, a Democrat — are the main speakers.

"To stick our heads in the sand and ignore the problem would be the worst," said Judge Ira Kaufman of the rural Plumas County Superior Court, who is president of the California Judges Association and a forum participant.

There has been a ramping up of rhetoric nationally in recent years, said Laurie Levenson, a professor at Loyola Law School, Los Angeles and a participant in the scheduled July 14 forum in Sacramento, Calif.

She pointed to the 2005 comments by evangelist Reverend Pat Robertson that liberal judges are probably a more serious threat to America than a few bearded terrorists who fly into buildings. Last year, Idaho's first female Supreme Court justice, Linda Trout, stepped down after 15 years rather than endure an expensive and divisive election. She had been targeted in an attack ad campaign in the 2002 election.

In Georgia, former Attorney General John Ashcroft recorded an automated phone call saying an incumbent judge was a "liberal activist" who would "stop at nothing to win," according to a 2007 Brennan Center for Justice report.

And in South Dakota, a California-based group pushed a "Jail for Judges" initiative that would allow criminal prosecution of judges for what amounted to unpopular rulings. Voters rejected it, but it set off alarm bells among jurists around the country.

**Rumblings to the south**

"If we don't pay attention, it could happen here," said Levenson. She noted that early warning signs have come in Southern California with a few efforts to unseat trial judges, all with ethnic sounding names. "All the judges filed against had Hispanic names," she said.

The most expensive campaign year on record for state Supreme Court candidates came in 2004, with $42 million in spending on races.

Ohio faced a multimillion-dollar election battle for one seat on the Ohio Supreme Court in 2000, making both candidates household names.

Ohio Chief Justice Thomas Moyer, who came to the California forum with a warning, said three statewide election campaigns there were "very negative." Moyer said the concern is not about the candidates' campaigns but the independent campaign organizations that may have a single issue and raise lots of money.

"Those campaigns say to the public, which may not be sophisticated about the importance of judicial independence, that judges are like other public officials; that they have views and they vote their views," Moyer said.

Moyer said the Ohio Legislature has required those outside groups to report campaign contributions, and he believes it helped to tone down the vitriol in the last election cycle.

"People are far less likely to contribute to negative campaigns if their name will be reported," Moyer said.

California has a dual system of judicial elections, with trial judges selected in contested elections for six-year terms. Appellate judges face unopposed retention elections, asking voters thumbs up or down for another 12-year term on the bench.

George, who wrote the opinion allowing gay marriage in California, does not face a retention election until 2009, more than a year away. But a placeholder Web site called RecallRonGeorge.com has already cropped up.

Controversial, big-issue opinions will always be problematic for judges, according to Moyer.

To counter that, the Ohio court has traveled around the state since 1987 for oral arguments, allowing the public and school students closer access to the process. "We are making strides," he said.

George has also pushed the practice hard in California.

# Ex-Gov: Constitution Could Express Public Distaste for Judge Campaign Statements (ABA Journal)

ABA Journal, Debra Cassens Weiss, July 15, 2008

Former California Gov. Pete Wilson is floating the idea of a state constitutional amendment addressing public distaste for judicial candidates’ campaign statements.

Wilson spoke yesterday at [a public forum sponsored by the Commission on Impartial Courts](http://www.abajournal.com/news/judicial_campaign_attacks_prompt_public_forum_on_fair_courts/), appointed by the chief justice of California’s supreme court. Wilson said the constitutional amendment would acknowledge judicial candidates’ right of free speech but express the public's desire that they refrain from taking positions on controversial topics, the [Recorder](http://www.law.com/jsp/ca/PubArticleCA.jsp?id=1202422983525) (sub. req.) reports.

Questionnaires sent to judicial candidates would be required to state the amendment’s expression of the public’s wishes, “providing entirely proper ethical grounds for a judicial candidate to decline to answer a questionnaire," Wilson said.

Loyola Law School professor Laurie Levenson wasn’t enthusiastic about the idea, according to the Recorder story.

"Call me a minimalist. I don't like going around constantly changing the Constitution," Levenson said. "But I do think it's quite outrageous that every judge I know that's running for retention election is asked to fill out one of these special interest questionnaires. I do think we should support them when they take the position of 'I'd love to but I can't.' "

A program for yesterday’s public forum said it was intended to address "a national wave of unfair attacks on the judicial branch" that "threatens to weaken our democracy and jeopardize every individual's right to equal access to justice.”

<http://www.abajournal.com/news/ex_gov_constitution_could_express_public_distaste_for_judge_campaign>

# Janice Rogers Brown: the career that almost wasn't (San Diego Union Tribune)

San Diego Union Tribune Weblog

Bill Ainsworth, July 14, 2008

SACRAMENTO - One liberal group called Janice Rogers Brown the "Far Right Dream Judge" during the battle over whether she would be appointed to the federal appeals court.

But former Republican Gov. Pete Wilson revealed Monday morning that Brown's career almost stalled at a critical point.

Wilson, who hired Brown to be his legal affairs secretary, appointed her to the state court of appeal and then in 1996 he tapped Brown for the state's high court.

But a committee of evaluators found her unqualified. After the evaluation, she offered to withdraw, Wilson told the Commission on Impartial Courts.

"She said 'governor I'm going to withdraw because I'm going to embarrass you,' " Wilson recalled. "I said you will only embarrass me, if you withdraw because this is not legitimate."

The rest is history.

Brown went to the high court, established a reputation as an outspoken conservative, attracted the attention of the Bush administration and in 2005 was appointed by President Bush to the Washington, D.C. appeals court that many consider to be the most important in the nation below the Supreme Court.

One way Brown established her reputation in California was clashing in court rulings on issues like affirmative action with another Wilson appointee, California Chief Justice Ron George.

If Brown is the conservatives' dream judge, George may be their nightmare. In May, he wrote the decision that made California the second state in the nation to legalize same-sex marriage.

# Where is the line for judges? (News Sentinel)

By Layla Bohm

News-Sentinel Staff Writer, July 15, 2008

If judges are supposed to be fair and impartial, what happens when they get drawn into campaigns that involve thousands of dollars in campaign contributions?

That is the question currently before San Joaquin County voters, who in November will elect a new judge in a rare election. Four candidates raised more than $188,000 for the June primary election and two of them, James Morris and Phil Urie, are now headed to a run-off in November's general election.

Both candidates said Monday that, though they are raising money, they will not let it hinder their judgment if elected.

Such sentiments reflected those at a forum held in Sacramento to address preserving impartial courts in California. The forum, put on by the Judicial Council of California, featured a number of speakers ranging from Ohio's chief justice to state supreme court justices to former governors.

California is not like some states, especially several in the Midwest, where judicial elections run into the millions of dollars and include brutal, misleading television commercials. Some special interest groups take on one particular judge for an opinion, despite the fact that several other judges sided with him in the majority.

Most California judges are appointed by the governor after a months-long background investigation by a state commission. There are exceptions, as happened in San Joaquin County, when Judge John W. Parker decided to retire without giving enough notice.

Urie, a prosecutor for more than 22 years, received the largest amount of votes in June's election. Many say that is because of his position.

| **Local campaign spending, as of May 17** |
| --- |
| Candidate | Money raised | Money spent |
| Larry Drivon | $70,526 | $63,302 |
| James Morris | $101,199 | $77,875 |
| Frank Pacheco | $2,501 | $2,230 |
| Phil Urie | $14,084 | $13,627 |
| Source: Campaign disclosure statements filed with the registrar of voters |

"I've heard stories back, where people say, 'Well, I don't like lawyers but I like prosecutors,'" Urie said.

Of course, what those people might not realize is that prosecutors are most certainly attorneys, and that all judges are attorneys, too. And that is why campaign money is needed, both candidates said: Voters don't usually know much about the candidates, and the "trial attorney" line on the ballot doesn't do much to enlighten them.

"It's name recognition," Morris said. "I've been practicing for 37 1/2 years but I don't have name recognition."

Whether campaign money helped Morris get the second highest number of votes is not known, but one thing is certain: He raised the most amount of money. His $102,000 trumped Larry Drivon's $70,500.

Urie, who raised $14,000, and Morris both said they have to raise more money for the general election.

While the June primary had a low turn-out, November's race is expected to bring record numbers of voters to the polls.

And that brings up the issue of raising money, much of which comes from fellow attorneys and special interest groups who could wind up pleading a case before the candidate they supported.

Neither Urie nor Morris said they have had contributions from special interest groups, and both said they know who the donors are.

But as would be expected, Morris, with decades of practice in San Joaquin County, said he is already headed off some potential conflicts in his work as a referee in civil cases. Now that he is campaigning, he said he first discloses his election bid and then checks to see if he ever represented someone involved in the case. If so, he notifies all parties involved and lets them decide if they still want him to be the referee.

So, if elected, Morris said he would continue that practice.

Urie has the same intentions, and said he would handle each matter on a case-by-case basis. He is aware that "if it were a major contributor that would at least have the appearance of impropriety."

Neither candidate has plans to publicly smear the other, and they probably will not reach the kind of spending that happens in other states.

In 2002, four Ohio supreme court candidates raised a total of $6.2 million, Ohio Chief Justice Thomas Moyer said Monday.

In the 2004 elections, two Illinois judicial candidates alone raised $9.3 million, said Laurie Levenson, a professor at Loyola Law school in Los Angeles.

Ultimately, voters and candidates alike must figure out who the judicial candidates really are, though the campaign spending and posturing complicates matters.

It is a subject the judicial commission plans to continue addressing, in order to avoid multi-million-dollar, nasty campaigns that are often seen in other states.

"Judges should not, cannot, must not be politicians," said California Supreme Court Associate Justice Ming Chin, who chaired Monday's forum.

**Sidebar: Suggestions on ways to improve impartial courts**

**Don't express opinions**

Former Gov. Pete Wilson on Monday proposed a state Constitutional amendment that would urge judicial candidates not to express their opinions. Any questionnaire sent to such candidates would include a red box listing the law.

It would not violate the candidates' First Amendment rights to free speech, since it is only a suggestion, but it would encourage them to remain impartial, Wilson said.

**Background checks**

Gray Davis who, as former governor of California, appointed judges, suggested that all candidates go through a rigorous background check. Such checks take at least three months and are performed on all potential candidates before the names go to the governor's office.

Davis said all future judges should be subject to the process, whether they are appointed by the governor or elected by the people. The information would appear in the voter guide and on sample ballots.

**Raise the pay**

Sen. Don Perata and Plumas County Judge Ira Kaufman, president of the California Judges Association, both suggested raising judicial pay in order to get a broader selection of candidates. Though judges currently made $179,000 annually, that's actually a pay cut for many attorneys who work in private practice or even for state agencies, Kaufman said.

**Educate the public**

Educating the public is a key, said Mary Wilson, a New Mexico attorney who is currently president of the nation's League of Women Voters. She suggested bar associations put together short videos to explain the legal process — not the version shown on TV drama shows — and air the videos in rooms where potential jurors are waiting.

# Witnesses Tell Panel Politics Threatens Judges’ Independence (Met News)

By a MetNews Staff Writer

SACRAMENTO*—*Anational wave of political threats to judges’ independence threatens the integrity of the judicial process, although it has not hit California yet, a number of witnesses told a state commission yesterday.

The witnesses were invited by the Steering Committee of the Statewide Commission for Impartial Courts, which was established by Chief Justice Ronald M. George last September, and spoke at a public meeting in the auditorium of the Secretary of State Building.

The commission, which works through the steering committee and four separate task forces, is chaired by Supreme Court Justice Ming W. Chin and is expected to deliver an interim report to the Judicial Council next month.

“Courts throughout the country are facing unfair political attacks that threaten to weaken our democracy and jeopardize every American’s right to equal access to justice,” Chin said in opening remarks.

Chin explained that the purpose of the commission is to study the importance of preserving the right to fair and impartial courts that make decisions free of outside influences. He stressed the commission’s belief in court accountability to codes of conduct, the law, and the Constitution instead of politicians and outside interests.

Among the speakers was Chief Justice Thomas J. Moyer of Ohio. Moyer, whose state elects judges in contested, partisan elections, is a board member of the Justice at Stake campaign, a national movement to support fair and impartial courts through reform of the election process.

Drawing on the experience of his and other states, particularly in the Midwest, Moyer criticized heavy campaign spending, misleading third-party political advertising, and aggressive questionnaires as problem areas affecting judicial impartiality.

Voter perceptions about financing hotly contested judicial races were a particular concern, the Ohio jurist said.

“What troubles voters is the growing need for contributions to judicial campaigns,” he said. “Nearly every survey concludes three out of four people believe the need to raise campaign contributions affects the decisions of judges.”

He recommended educating the public about the purpose of the court as being the most important step to maintaining judicial impartiality. Other steps should include reducing the role of fund raising in judicial campaigns, clarity of judicial accountability, and steps to ensure the integrity of the judicial selection process, he urged.

The witnesses included two former governors, Democrat Gray Davis and Republican Pete Wilson, who cited similar concerns.

Davis criticized movements in other states to limit judicial terms and strip judges of their immunity from civil liability for their decisions, and said judicial pay needs to more closely reflect the realities of the private sector. He also contrasted the lack of information available to voters with the extensive data that the governor reviews when making appointments.

“All judges should be subjected to the same rigorous background checks, whether they are appointed or elected,” Davis said. Wilson spoke about keeping judges focused on the judicial process rather than the societal or political impact of judicial decisions.

Wilson echoed Moyer’s criticism of political position questionnaires sent to judges during campaigns. “Candidates should not announce their views on upcoming judicial matters,” Wilson said, acknowledging that a fine line exists between a judge’s individual right to freedom of expression and their obligations as a jurist.

Manny Medrano, anchor for KTLA news in Los Angeles and a former federal prosecutor, said attacks on judicial impartiality are coming from within the court system - by way of dissatisfied litigants and attorneys – as well as through the political activities of special interest groups.

Medrano suggested that demystifying the workings of the legal system would help ensure judicial impartiality.

“Our legal system works because people have faith and trust in the system,” he explained. “Giving people a better grasp of the underlying works helps reinforce that trust.”

In addition to advocating the use of cameras in the courts at all levels, Medrano suggested that judges perform outreach activities similar to the pro-bono activities used by private law firms.

“Our greatest weapon is a public that knows and understands how the legal system works,” he said.

Senate President Pro Tem Don Perata, D-Oakland, drew on his experiences as a civics teacher in his comments. In addition to stressing the need for public education, Perata suggested improving the compensation of judges in order to attract the best and brightest to the judiciary and to encourage diversity.

“Judges’ salaries have not kept pace with what we expect them to do,” said Senator Perata. “It is becoming difficult to attract diverse candidates.”

Professor Laurie L. Levenson of t Loyola Law School said public confidence in the legal system plummets when a judge’s impartiality is challenged based  on the belief that a judge is beholden to monetary or political forces.

Levenson focused on anti-court rhetoric, legislative attacks, reductions in court spending, and the process of “litmus-testing” of judges. She cited attacks by the press, physical threats, and the costs associated with retaining judicial office during elections.

“I commend California for taking the important step of recognizing and addressing these concerns,” she remarked.

State Bar President Jeffrey Bleich opined that judicial impartiality rests in faith in the system. “Our faith in the integrity of our courts must be a living, working reality,” he said.

Bleich suggested increasing public awareness of the judicial process and judicial qualifications was an important step to keeping the judiciary impartial.

Plumas Superior Court Judge Ira R. Kaufman, the president of the California Judges Association, explained programs maintained by the association to help maintain judicial impartiality. Kaufman stated that the association maintains a “response to criticism unit” to help insulate judges from political attacks based on unpopular legal opinions.

He cited the successful effort to persuade Sacramento County voters not to sign recall petitions targeting Superior Court Loren McMaster following a ruling, upheld on appeal, that Proposition 22, the statutory initiative stating that only marriages between a man and a woman are recognized in California, does not invalidate the state’s domestic partner law.

Stanford professor and former dean Kathleen M. Sullivan of Stanford University. Professor Sullivan discussed the impacts of *Republican Party of Minnesota* *v. White*, 536 U.S. 765 (2002) which invalidated a Minnesota law preventing judicial candidates from discussing public issues that might come before the court.

Concerns that the ruling handcuffs efforts at keeping election-related politics out of judicial decision-making may be overstated, she suggested. “There are very powerful arguments that can be used to prevent special interests from using the First Amendment to influence judges,” she said.

# Legal Heavyweights seek to protect Calif. judges (Legal Newsline)

Legal Newsline

BY SCOTT SABATINI, July 15, 2008

SACRAMENTO, Calif. (Legal Newsline) -A cast of legislative and legal heavyweights at a public forum Monday said they were determined to protect California from increasing political pressure on judges.

The Commission on Impartial Courts hosted the forum that included testimony from former California governors, legal experts and heads of the state bar and judges associations.

Former California Gov. Pete Wilson said protecting the impartiality of judges required a revision of California's constitution.

Wilson, a Republican, said he would like to see the constitution forbid groups from trying to force candidates for judgeships to make personal views known.

Special interest groups are asking judges to fill out questionnaires on their personal views, a practice Wilson said is a threat to impartiality on the bench.

Justice Ron Robie of California Court of Appeals, who is a member of the commission, said he didn't agree a constitutional amendment is needed, but appreciated that Wilson started the debate.

"There will be a lot of discussion," Robie told Legal Newsline after the hearing, "I was pleased (Wilson) raised something that causes people to think about it. The task force assigned to that may well agree with his recommendation."

Robie believes the goal of Wilson's recommendation can be accomplished without changing the constitution.

"The constitution is always very long," Robie said, "and people want to put everything in it. You have to do an analysis and decide if it really needs to be amended.

"A statute that judges shouldn't comment on issues would be just as good. I think it can be a provision that judges don't have to follow, but our encouraged to, which is as far as you can go within the constitution."

Loyola Law School Professor Laurie Levenson told the commission that Wilson's proposal could interfere with the first-amendment rights of freedom of speech, but she agreed, according to the Sacramento Bee, that something needs to be done.

"I don't like going around and constantly changing the constitution," Levenson said, "but I don't like that every judge is being asked to fill out these special-interest questionnaires."

Levenson said judges would face increasing political attacks if they filled out these questionnaires.

Robie said the forum was successful not just because of the prominent people who spoke, but that "it wasn't just people agreeing to the concept. They offered substantive ideas."

"I thought the forum was very interesting" Robie said. "There were many substantive comments. Both governors (former Gov. Davis also spoke before the commission) offered positive and specific suggestions."

Robie said he was encouraged by the testimony of Ohio's Chief Justice Thomas J. Moyer, who shared many of the problems that his state had recently endured and things Ohio is doing in response.

"It confirms some of the things we are already doing," Robie said. "He also said some of the negative attack ads actually turned off the voters and had the opposite effect… but the costs of the election were staggering."

Former Dean of Stanford Law School Kathleen M. Sullivan offered the commission, "specific legal suggests and constitutional analysis that was generally very positive," Robie said.

The chairs of the commission's four task forces will present an interim report of its respective findings to Judicial Council of California at its Aug. 15 meeting, said Robie, who is a member of the commission's steering committee.

The four tasks forces are judicial section and retention, judicial campaign conduct, judicial campaign finance and public information and education.

The final report from the commission will be presented in June 2009, according to Christine Patton, regional director with the administration office of the court.

Robie said he and others were encouraged by the feedback from Monday's forum as they prepare their interim reports.

"The general feeling is that we have a pretty good system here," Robie said. "We don't have partisan elections, and we have retention elections at the appellate level, so we're not taking a system that is fundamentally a problem."

<http://www.legalnewsline.com/news/214161-legal-heavyweights-seek-to-protect-calif.-judges>

# Ways to protect judges from politics (SF Chronicle)

Bob Egelko, Chronicle Staff Writer

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Two former California governors who once said judges who issue objectionable rulings should lose their jobs have offered suggestions to a state commission on how to protect the judiciary from politics.

Ex-Gov. Pete Wilson says the state Constitution should be amended to help judicial candidates fend off political questionnaires. His successor as governor, Gray Davis, suggested a law that would give voters more information about candidates for trial courts.

Both stressed the need for judicial independence - Wilson disparaged "those who would seek to make political hay (by) criticizing the judiciary," while Davis said partisan forces pose an imminent danger to the courts.

Wilson, the state's Republican governor from 1991 to 1999, and Davis, a Democrat who governed from 1999 until his recall in November 2003, both testified Monday at a Sacramento hearing of the Commission for Impartial Courts.

Both said in interviews afterward that they had little recollection of past comments that seemingly pulled in the opposite direction from their current endorsements of judicial independence - Wilson's statement that then-Chief Justice Rose Bird should be recalled if her court overturned a 1982 crime initiative, and Davis' observation that his judicial appointees should resign if they didn't go along with his views on issues such as the death penalty.

Chief Justice Ronald George established the courts commission last year to recommend changes in state laws on judicial appointments and elections, saying he was concerned that recent multimillion-dollar campaigns for control of courts in other states would spread to California.

California's judges have largely stayed out of the political spotlight since 1986, when Bird and two state Supreme Court colleagues were removed from office in a campaign that focused on their votes to overturn death sentences.

But the role of the judiciary will be an issue in this year's battle over a Nov. 4 initiative, Proposition 8, that would amend the California Constitution to overturn the state Supreme Court's May 15 ruling that legalized same-sex marriage. Jennifer Kerns, spokeswoman for the Prop. 8 campaign, said Tuesday that one of its themes will be that "activist judges ... brazenly overruled the will of the people."

George, who wrote the ruling, and Justice Carlos Moreno, who was part of the 4-3 majority, are scheduled to be on the 2010 ballot seeking new 12-year terms.

At Monday's session, several witnesses said political pressure on courts around the nation has grown since the U.S. Supreme Court ruled in 2002 that states can't prohibit judicial candidates from discussing issues that they might later consider as judges. Would-be judges now regularly receive questionnaires from interest groups seeking their views on such issues as abortion and same-sex marriage, Ohio Chief Justice Thomas Moyer told the California commission.

Saying such inquiries endanger the courts' neutrality, Wilson suggested a state constitutional amendment that would urge judicial candidates in California not to answer political questions and that would require all questionnaires to include that advice.

Davis said one way politics creeps into the courts is in Superior Court elections, where voters typically "don't have a clue" about the candidates. One remedy, he said, is for the State Bar commission that now does background checks of a governor's potential court nominees, and presents confidential evaluations to the governor, to conduct the same review for all judicial candidates and make the assessments public.

Both ex-governors were interviewed afterward about their past statements on judges and politics. Wilson said he remembers criticizing Bird in 1982 - during his successful U.S. Senate campaign against Democratic Gov. Jerry Brown, who had appointed the chief justice - but doesn't recollect urging her recall.

News accounts at the time, however, quoted Wilson, then the mayor of San Diego, as saying he would support a recall if Bird's court struck down a prosecution-backed crime initiative that voters had approved earlier in the year. Such a ruling would be "flaunting the public will," he said.

The State Bar's Conference of Delegates passed a resolution in September 1982 condemning Wilson's remarks as an attack on judicial independence. The court later upheld the initiative's key provision, with Bird among the dissenters.

Davis was quoted in February 2000 as saying his judicial appointees should reflect the positions that helped him get elected, such as support for capital punishment and abortion rights. Judges he appointed "are not out there to be independent agents," he said, and those who reached views that opposed his positions should leave the bench.

That wasn't what he really meant, Davis said Monday. He said his point was that he tried to screen judicial candidates carefully and choose those who shared his positions.

"Every governor hopes his appointees are more or less in sync with his governing philosophy," Davis said. "Once they're appointed, they're free agents, obliged to follow the Constitution and the law."

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