

Is this any way for Idaho to pick a justice?

Marty Trillhaase/Lewiston Tribune

Nobody expects a governor, a senator or even the president of the United States to be independent or impartial.

Of course, the great ones are.

But politicians are creatures of their political parties. They reflect their core constituency. They answer to their donor base. If you're outside that circle or backed the losing side, too bad. Elections, as they say, have consequences.

But your birthright as an American is to expect a judge who is independent and impartial.

In other words, you have a judge who is free to follow the law and does not answer to another branch of government, any special interest or even public pressure.

And it means a judge who extends fairness to everyone in his courtroom.

Without that, public faith in the judiciary crumbles - and with it, courts become just another creaky appendage of a cynical machine.

In the weeks leading up to Tuesday's primary election, however, the lines between politics and justice have blurred.

Four candidates are running to succeed retiring Idaho Supreme Court Chief Justice Jim Jones - Rupert attorney Robyn Brody, Idaho Court of Appeals Judge Sergio Gutierrez, state Sen. Curt McKenzie, R-Nampa, and Clive Strong, veteran chief of Attorney General Lawrence Wasden's Natural Resources Division.

If one of them wins an outright majority in a primary where Republicans dominate turnout at 5-to-1, it means instant election. If not, the top two vote-getters will proceed to a run-off in the Nov. 8 general election.

What are you hearing about them?

- Brody's prodigious fundraising. Her campaign's pre-primary Sunshine report lists \$176,491 in contributions - including \$104,500 from trial attorneys.
- McKenzie's ties to political lobbies. Among those endorsing the seven-term lawmaker are the Idaho Farm Bureau Federation and the anti-abortion rights group Idaho Chooses Life, which made a \$6,000 expenditure on McKenzie's behalf.
- Strong's political backing. His supporters include not only former Gov. Cecil D. Andrus and House Speaker Scott Bedke, R-Oakley, but J.R. Simplot Co., - which contributed \$5,000 to Strong's campaign, the maximum allowed under Idaho law.

- Gutierrez's relative lack of resources. The judge's campaign came in fourth in the fundraising sweepstakes - \$12,795, trailing McKenzie's \$16,399 and Strong's \$49,324. Of course Brody raised more than all of them combined.

Under the judicial canons, these candidates delegate fundraising to a committee. They're not supposed to know who gave them money.

But the voters do know who's supporting which candidacy - and may act on it.

If you want to see how far afield this has gone, consider how different the conversation would be had Jones retired at mid-term.

Filling his seat would have been assigned to the Idaho Judicial Council, which consists of the Idaho chief justice, a representative of the governor, a district court judge, a magistrate, two lawyers and two non-lawyers.

Applicants would be vetted not on their political friends or prowess at lining up money, but on such attributes as their ability to communicate in writing, their scholarly aptitude, diligence at work and ability to be impartial. A sitting judge's courtroom demeanor would be reviewed. A lawyer's accomplishments, such as arguing cases before the U.S. Supreme Court, would be noted.

The public gets a chance to weigh in with anonymous comments. And the Judicial Council's interviews of the applicants are conducted in the open.

Once complete, the council submits two to four finalists to the governor, who makes the final selection.

But as often as not in the last 20 years, Idaho Supreme Court seats have been subjected to contested elections. As designed, elections are supposed to leave judges accountable to the voters. But in practice, they escalated from the independent smear campaign that helped elect Justice Daniel Eismann in 2000 to the openly identified political factions and special interests operating today.

This can be fixed.

Why not simply appoint judges?

How about publicly funding their campaigns?

At the very least, Idaho should stop giving a closed GOP primary a disproportionate role in selecting the judiciary. Simply elect the winner - even by plurality - in the general election where the turnout is always much larger and more diverse.

Or Idaho can continue down this path.

But you might worry about what's coming next. - M.T.