

It's time to fix Idaho's flawed judicial elections

Marty Trillhaase/Lewiston Tribune

A year ago, then-state Sen. Curt McKenzie, R-Nampa, came as close to claiming a seat on Idaho's Supreme Court as possible - without actually getting one.

It did not seem to matter that McKenzie was not particularly qualified to sit on Idaho's highest court.

Or that his opponents for the seat being vacated by then-Chief Justice Jim Jones had far more credentials. Among them were Idaho Court of Appeals Judge Sergio Gutierrez, who had 15 years on the appellate court and another six as a District Court judge; Clive Strong, who for three decades served as the head of the attorney general's Natural Resources Division; and Rupert attorney Robyn Brody, who had practiced law for 20 years.

What mattered most was that all four were running in an election - and not just any election. They were facing off in the May 16 primary in which Republican voters have a 4-to-1 advantage over Democrats.

Even though the judicial campaign was nonpartisan, McKenzie traded on his 14 years as a Republican politician.

He paraded his endorsements from such groups as the National Rifle Association, the anti-abortion rights lobby Idaho Chooses Life, the Idaho Farm Bureau, the Idaho Association of Commerce and Industry, the Idaho Association of Realtors and the Professional Firefighters of Idaho.

No matter that McKenzie was a walking-talking conflict of interest; the tactic worked well enough; McKenzie got 27.7 percent of the vote, second only to

Brody, whose own backing among another special interest, the state's trial attorneys, helped her secure 30.3 percent.

That sent McKenzie and Brody into a runoff in the November election, while Strong and Gutierrez returned to their careers. And in the fall, McKenzie came within 42,264 votes of defeating Brody, who claimed the seat with nearly 54 percent.

McKenzie was far from finished. When a second justice, Daniel Eismann, announced his retirement last spring, the former state senator jumped in again.

But there was a key difference. When Jones opted to serve out his term, his replacement would be selected by the voters.

Eismann is stepping down this month with about 16 months left to run on his tenure. Under those circumstances, the Idaho Judicial Council screens applicants and nominates up to four finalists; Gov. C.L. "Butch" Otter would make the final appointment.

But the Judicial Council isn't interested in endorsements.

It doesn't care about party affiliation or even political experience.

The council looks for the qualities one would expect from a judge - impartiality, judicial temperament, experience and even a few ideas about how to improve the court system.

More than a dozen people applied; half of them were judges already.

McKenzie took one look at the competition, took another at the Judicial Council and withdrew his candidacy.

"I just didn't feel like the timing was right," McKenzie told the Spokesman-Review's Betsy Russell, "because the person who wins that will have to run for election next year, basically the next election cycle. I just didn't feel like I wanted to run again in that time frame, that soon."

Coincidence?

Ultimately, the judicial council whittled the list down to four - three District Court judges - John Stegner of Moscow, Greg Moeller of Rexburg and Richard Bevan of Twin Falls, and Boise attorney Rebecca Rainey.

That's a better outcome. No question about that. Still, from this point forward, politics becomes paramount. Woe to the candidate who has alienated Otter or anyone in his political circle.

The problem here, of course, is that you face two extremes - an election process in which partisan voters can elevate a political hack to the bench vs. a Judicial Council nomination system in which the average Idahoan has virtually no leverage.

How many more times must Idaho travel down this road?

No judge should be elected in a low turnout, partisan primary election. Leave that decision to the broader electorate that engages in the November general election.

But give the voters some meaningful information. Assign the Judicial Council the job of evaluating the candidates and then reporting their findings to a public hungry for relevant information.

Is it too much to ask for a little common sense? - M.T.