

Sept. 5, 2017

We should vote for judges in the general election

By Jim Jones

Idaho's magistrate judges stand for a retention vote in the November elections. This makes sense because two or three times more people vote in general elections than in primaries. However, Justices on the Idaho Supreme Court and judges on the Court of Appeals and district benches are voted upon in the lower turnout primary elections. If there are more than two candidates in one of these elections and no candidate receives a majority, the two candidates with the most votes have a run-off in the general election.

It would work much better if all judges were voted upon in November. When judges are up for election in the May primary, the winner is picked by about a fourth of the registered voters. In 2012, there was a 24.5% turnout in the May primary, as against a 74.3% turnout in the general election in November. In 2014, the May vote was 26.1%, while the vote in November was 56.1%. Last year, 23% voted in the primary and 75.9% voted in the general election. Why not select judges in elections where a majority of registered voters participate?

The Legislature may have set the district and appellate elections in May so that a candidate getting only a plurality of the vote would not end up on the bench. The fact is that it is not common to have a contested election for these positions and, when there is a contest, it is not common to have more than two candidates. There were four candidates in the 2016 election, but the same candidate, Justice Robyn Brody, was the top vote-getter in both the primary and general elections.

There is another compelling reason to hold judicial elections later in the year. The filing deadline for positions on the district and appellate courts is March 9 next year. The primary election is May 15. So, judicial candidates will only have 67 days in 2018 to organize and conduct a campaign. These people are not politicians and generally do not have any experience in organizing and running a campaign. Even worse, they can't take stands on issues and, consequently, get very little media

coverage. Judicial candidates simply need more time to cover a large state and make themselves known.

And, voters need more time to learn about the candidates. Only 32% of registered voters cast their ballots in the primary election in 2002. Of those voters, 22% did not vote in the contested Supreme Court race. A survey of voters conducted by Rachel Vanderpool Burdick found that 40% of those who did not vote said they did not have enough information about the candidates. The average voter generally has little exposure to the judicial candidates and therefore goes into the voting booth shooting blind.

Let's look at a case history to illustrate some problems with the current system. A fine justice was appointed to the Supreme Court in September of 2007 to fill out an existing term (current Justice Joel Horton). His term ended in 2008, so he had to file for reelection just six months after his appointment. He learned during the March filing period that he would have an opponent in the May primary, necessitating a start-from-scratch campaign. The opponent had quietly laid substantial groundwork, had the necessary financing arranged, and started off with a substantial advantage. The incumbent had to figure out in slightly less than two months how to set up and run a campaign, how to have others raise money for him since a judicial candidate may not personally raise funds, and how to carry a full load of appellate judging all the while. He won in the primary but by a razor-thin margin. Such a short fuse for such a low-profile race for such a large state serves neither the candidates nor the voters well.

The Legislature should eliminate voting for district and appellate court positions in the primary election and schedule those elections for November. The person receiving the most votes should get the position. The filing period should be moved to the first week in June, giving candidates five months to campaign. This would allow a majority of voters to select judges and give those voters more time and opportunity to make an informed choice.