

Don't Reject Judges in Retention Elections

Allison DeFoor and Talbot D'Alemberte

"Don't shoot the Piano Player". In the Wild West that sign was said to hang near the piano player in saloons where factions often shot it out in the Old West. The value of the piano player, to both sides, was said to merit a place out of the line of fire, and good piano players were hard to find.

The current political dynamics, in America and in Florida are not quite the Wild West, but they are often as fractious as the early days of the Republic. The issues of the day are significant, and the two authors of this op-ed disagree on many, though not all, of them. The passions surrounding these issues are strong, and at their core relate to the nature and extent of appropriate governance, and were debated by the Founding Fathers who elected life tenure for federal judges in order to preserve their independence. With the populist movements of the Andrew Jackson era, elections for judges came to be accepted as the norm for state judges though gradually, non-partisan elections and merit retention systems have blunted some of the evil that enters the judicial system when judges are entangled in politics.

Florida has a system that allows voters to vote to "retain" or "not retain" appellate judges every six years. In the heat of the moment, some of the Tea Party supporters have suggested that Justices Labarga and Perry not be retained on the seats they currently hold on the Florida Supreme Court. The only cited reason for this notion is that the Supreme Court, in a 5-2 decision voted to remove from the ballot a proposed constitutional amendment relating to health care. No other infirmity is suggested. There are also groups circulating "not retain" lists on other appellate judges without revealing the criteria for their recommendations, though in one such case one of the writers suggests that there might be extenuating circumstances.

Think about it. It is suggested, admittedly in the heat of the moment, that judges be turned out of office merely for ruling upon a case. It does not take a long period of reflection to see where that road ends. In both the state and federal courts various retention schemes have been used to try to build in some impartiality, to avoid judges who merely count votes before ruling. In this case, no legal reason for removal from office has even been suggested. It is merely asked that these justices be, in effect, handed over to the mob.

Lady Justice is traditionally shown as wearing a blindfold when depicted in art. The interesting exception to this tradition is on the entrance to the courthouse in Virginia City, NV. The reason was said to be that the town was too crooked for Justice to close Her eyes even for a minute.

We should all want Justice that is blind to partisan political considerations. That is why the two writers of this piece share, among other things, an idiosyncratic common link. Liberal Democrat D'Alemberte publically recommended the affirmation of conservative nominee Robert Bork for the U.S. Supreme Court. Conservative Republican DeFoor publically called for retention of Justice Rosemary Barkett to the Florida Supreme Court, in the face of opposition suggesting that she was too liberal. In both cases, the authors suggest that the nominee's honesty and ability trumped, and that politics be eschewed.

Whatever case or cause, we hope that all can agree that judges should not be counting votes before ruling. Turning justices or judges out of office for their rulings will turn retention elections into partisan fights rather than referenda on the judges' competence and integrity.

In the end, perhaps we might all agree, "Don't shoot the Piano Player"?