

A Seven-Point Plan for Michigan Supreme Court Reform

Justice Elizabeth A. Weaver (Chief Justice 1999-2001; retired August 2010)

Here is the proposed solution, a seven-point plan for not eliminating our dual system of electing and appointing Supreme Court justices, but reforming it. Of note: the election of Supreme Courts justices is retained. There is no reason to assume that a system that allowed only appointments would be any less flawed and political than the current elections and appointments. Then too, why should we modify the Michigan Constitution in order to give us citizens less direct say in our government? There is nothing inherently wrong with elections; with accurate information, they allow the people to hold accountable their high officials. It's our justice selection process of party nominees and unregulated, untraceable, unaccountable, unidentifiable, deceitful spending, unchecked gubernatorial power to appoint justices for vacancies, lack of rotation in high office, and *unnecessary secrecy* that's doing us in.

Four of the proposals of the seven-point plan require legislative action and only three require constitutional amendment.

Concerning elections and appointments we should:

1. Provide no political party nominations for elections. Supreme Court candidates would earn a spot on the ballot by petition—the same way trial and Court of Appeals judge candidates do. [In 2010 former Senator Alan Cropsy introduced Senate Bills 1296-1300 to accomplish this, but no action was taken.] (To be achieved by legislation.)

2. Achieve rotation in high office by limiting to only one term of a maximum of 14 years for any justice together with removing the upper 70 age limit as a qualification for running for the office of justice, and a justice never would be eligible for reelection or appointment. In recent discussions much has been made of the idea of removing an upper age limit for the election of justices. Many would be well qualified to serve into their later years, but it could become a serious issue if there is no limit on their tenure at the Supreme Court. The 14-year limit will insure rotation in this office. (To be achieved by constitutional amendment.)

1. Establish for the appointments process, a non-partisan advisory Qualifications Commission composed of 15 voting members and the chief justice as the non-voting chair. Five (5) attorney members to serve on the commission shall be submitted by the Board of Commissioners of the State Bar of Michigan and shall be appointed by the governor. Ten non-attorney members to serve on the commission shall be appointed by the governor.

The process for appointment would require:

- The commission will meet and publicly provide in writing to the Governor two nonbinding recommendations within 60 days of a vacancy. Those written recommendations are to include why those two candidates are best qualified for a position on the Michigan Supreme Court.
- The Governor then can choose one of the two candidates recommended by the Qualifications Commission, or choose someone not recommended by the Qualifications Commission. If the Governor chooses someone not recommended by the Qualifications Commission, the Governor must give public, written reasons why her or his appointee is the best choice before or at the time of submitting an appointee's name to the Senate. The Governor must submit the appointee's name to the Senate within 60 days of receipt of names from Qualifications Commission or lose the right to make an appointment. In such a case, the Senate must appoint one of the Qualifications Commission's recommended candidates.
- The state Senate must hold at least one public hearing on the Governor's appointee within 60 days of the Governor's appointment. The Senate has the right to confirm or reject the appointment by majority vote. If the Senate does not vote to confirm or reject the appointee within 60 days of the Governor's submission of the appointee, the Governor's appointment takes effect. If the Senate rejects the appointee by majority vote, the Senate must publish promptly its reasons in writing whereupon the Qualifications Commission will have 30 days to reconvene and begin the process anew. If the Qualifications Commission fails to timely reconvene, the vacancy shall be filled at the next general election for the remainder of the term.
- If both the Qualifications Commission and the Governor fail to timely and properly perform, the vacancy shall be filled at the next general election for the remainder of the term.
- The appointed or elected justice only serves for the remainder of the vacant term and shall not serve an additional term or partial term. (To be achieved by constitutional amendment.)

4. Require transparency and accountability in campaign finance reporting requirements. Allow no secret or unnamed contributors. This would involve real-time reporting (and within 48 hours for all elections). (To be achieved by legislation.)

5. Provide public funding. Use tax check-off money designated for gubernatorial campaigns for Supreme Court campaigns. (To be achieved by legislation.)

6. Provide election by district. The state should be divided into seven (7) Supreme Court election districts with one justice coming from each district. That will allow the geographic diversity in representation now so clearly absent. [In 2009 former Senator Michelle McManus introduced Senate Bill 745 to accomplish this; it had one hearing in committee in 2010 but no action was taken.] (To be achieved by legislation.)

7. Eliminate *unnecessary secrecy* and require transparency in the Supreme Court. Reaffirm every Michigan Supreme Court justice's duty to the people to inform them of what they need to know—no more, no less—as each justice deems necessary, about what the Supreme Court decides and how, why, when and where. Prohibit any attempt to keep any justice from communicating to the public forever about the decisions, performance and operations of the Court. Reaffirm as amendment to the Constitution the standard of only *temporary secrecy* for pending and impending proceedings in Canon 3A(6) of the Code of Judicial Conduct that provides: "A judge should abstain from public comment about a pending or impending proceeding in any court ..." (To be achieved by constitutional amendment.)

So, there it is: a proposed solution a seven-point plan growing out of my long experience as a judge and justice...and with a dose of common sense.

NOTE: To implement the Seven-Point Plan, a transition period will be necessary

A transition period will be necessary to reform and convert the present unchecked and unbalanced dual system of election and disorderly secret appointment of Supreme Court justices.

In the transition period the present election system of elections every two years of eight year terms for justices with incumbency designations would be converted to the reform system of one election without incumbency designations every two years of one justice for one of the seven election districts for one 14 year term (with no age limitation), with only one term of no more than 14 years for any justice, with no reelection or appointment of an elected justice, and with no reappointment or election for an appointed justice.

In addition, during the transition period the present disorderly secret appointment system of unchecked secret gubernatorial appointments of justices for vacancies would be converted to the transparent and open reformed check-and-balance system for vacancies filled by gubernatorial

appointment with advisory committee recommendations and Senate confirmation for only the remainder of the vacant terms.

For example, assuming the necessary reform laws were adopted into law effective for the 2014 Supreme Court justices' election (by needed constitutional amendment vote of the people and/or the needed implementing legislation of the House and the Senate) the following transition rules would allow fairness to justices elected and/or appointed under the old system laws and holding office on or before November 1, 2014, the following one time exceptions:

- the terms for the elections during the transition period may be less but not more than 14 years;
- a serving elected or appointed justice would be able to run for election in his/her district one time as long as the justice's total number of years of service on the court if elected would be no more than 14 years.

The transition election terms, districts, and schedule would be as follows: The present Michael Cavanagh seat would be in District 1 with 14-year terms; Cavanagh with 32 years of service would not be able to run.

The present David Viviano seat would be in District 2 with a one-time, 12-year term and 14-year terms thereafter; Viviano with almost two years of service would be able to run.

The present Brian Zahra seat would be in District 3 with a one-time, 6-year term and 14-year terms thereafter; Zahra with almost four years of service would be able to run.

The present Mary Beth Kelly seat would be in District 4 with a one-time, four-year term and 14-year terms thereafter; Kelly would be able to run.

The present Robert P. Young, Jr. seat would be in District 5 with 14-year terms; Young, with more than 17 years of service would not be able to run again.

The present Bridget Mary McCormack seat would be in District 6 with a one-time, four-year term and 14-year terms thereafter; McCormack would be able to run.

The present Stephen J. Markman seat would be in District 7 with a one-time, 10-year term and 14-year terms thereafter; Markman, with more than 17 years of service would not be able to run.

Election Schedule

	District#1	Dist#2	Dist#3	Dist#4	Dist#5	Dist#6	Dist#7
Election							
Year	Term						
2014	14yr	12yr	6yr				
2016	No election for justices						
2018				4yr	14yr		
2020			14yr			4yr	10yr
2022				14yr			
2024						14yr	
2026		14yr					
2028	14yr						
2030							14yr

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