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MAYOR MICHAEL R. BLOOMBERG DELIVERS TESTIMONY BEFORE THE COMMISSION TO PROMOTE PUBLIC CONFIDENCE IN JUDICIAL ELECTIONS

Mayor Bloomberg's prepared remarks are below:

Dean Feerick and members of the commission: thank you for inviting me to present my views to you on how we can improve the process of judicial elections.

Chief Judge Judith Kaye has asked you to address an issue fundamental to the fair and effective administration of justice. Clearly, there is something wrong in the way we elect our judges -- and it is undermining public confidence in the quality and integrity of the bench.

When I read that divorce cases may have been decided in a particular way because of fancy dinners a judge was offered...or that custody of a child may have been granted based on how many cigars a judge received... I am ashamed. I am outraged. And most New Yorkers are similarly disgusted and angered.

Being a judge should mean something. A judge should be someone the average person can look to with respect when he or she comes to court.

The public must have confidence that the rule of law -- the bedrock of our society -- is being fairly administered. Judges should represent the majesty of the law--and that's impossible, when all that is reported are allegations of corruption.

I do not believe that corruption pervades our courts. But unfortunately, there is something else that is not the rule, either. And that is the application of rigorous standards to ensure that the most highly qualified candidates, drawn from a representative cross-section of society, are nominated for judgeships.

Our judges must be men and women who do more than meet minimum standards of honesty. We want the best on the bench -- candidates who have the integrity, temperament, and life experiences to be great judges. I believe that a merit-based system for the selection of judges is crucial to ensuring that the courts receive the trust and earn the respect they must have.

The Charter Revision Commission which I appointed, and whose proposal for non-partisan election of City officials will be on the ballot in November, conducted months of research and public hearings. Their work sheds light on how the status quo in choosing judges undermines both the fairness of the electoral process -- and belief in the impartiality of the courts.

Witnesses before the Commission testified, for example, that in cases brought to remove candidates from the ballot, judges are often perceived as doing the bidding of party bosses. They also testified to purported insider dealing in selecting judicial candidates.

We have read about the need to hire the "right" political consultants. But stories also abound that in order to ensure a fair hearing, "local counsel" -- that is, lawyers with political connections in the particular courthouse -- must be hired to serve as co-counsel in high-profile matters.

Any way you look at it, the current judicial election process is profoundly undemocratic.

In the case of Civil Court Judges, Democratic Party primaries in practice constitute the only genuine opportunity for voter participation—and turnout in these elections is pathetically low. A week ago today, for example, only some 2,200 Democratic voters, out of a potential pool of 30,000, voted in a Civil Court primary in which one of the candidates was a judge who had rendered a recent controversial decision.

In effect, 4% of all the voters in the district -- ratifying a decision of a local political club -- decided an exceptionally high-profile contest. The winning candidate in that election—whose margin of victory was approximately 600 votes—will now sit in judgment on major matters affecting this City for the next ten years.

This was a typical judicial primary—and the result is that the winning candidates are always virtually hand-picked by party leaders, and then go on to easy “coronations” in the general election. Even worse, party judicial conventions, where Supreme Court nominees are selected, are completely shrouded in secrecy with absolutely no input from the electorate.

It's a rare case when someone runs for the bench who has not been active in party politics. There's nothing wrong with being politically active. But knowing where the local clubhouse is should not be a pre-requisite for becoming a judge.

War, it's been said, is too important to be left to the generals—and justice is much too important to be left to the politicians.

The alternative is to base the selection of judges on merit. And the very successful system we have in this city for appointing family and criminal court judges offers a guide.

Our Administration's merit appointment Executive Order -- modeled on those issued by Mayors Koch, Dinkins and Giuliani -- provides that the Mayor will not appoint anyone to the bench who is not recommended by an Advisory Committee on the Judiciary. This is not a screening committee. It does not simply determine if candidates are minimally qualified. The committee can nominate up to three people for every vacancy. If there are more than three qualified candidates, as there frequently are, the committee must propose the names of those it considers the top three.

And it is only from those three that I may make my appointment to the bench.

The quality and independence of the advisory committee is the key to its success. The Executive Order provides that the mayor name a minority of the committee's members. The others are appointed by the Chief Judge, the two presiding justices in New York City, and, on a rotating basis, two law school deans.

This process has given the City extremely well qualified candidates for the Family and Criminal Court Bench. The judges we've appointed all have outstanding legal credentials and experience. They also come from varying backgrounds, as befits judges who will hear cases in the most diverse city in the world. Of the 16 new judges appointed to the bench based on my Advisory Committee's recommendations, more than half are women and more than a third are minorities.

What I can't tell you, because I don't know, is whether any of these judges were active in Republican or Democratic politics. *I don't know because I don't ask.* Their political affiliations are irrelevant to whether they are good judges. Period.

While I would prefer the merit appointment of all judges, the political reality is that we're going to continue to have the election of Civil and Supreme Court judges. So let's have the best system for electing them that we can.

To reform judicial elections, I recommend a merit-based judicial nomination process that would be similar to the process our Administration follows. It can be implemented immediately, without the need for changing a single law. This proposal has four elements...

First, each political party should form an advisory committee for judicial candidates composed of a cross-section of the community.

Second, each party should pledge that it will not support, and will not nominate at party primaries or judicial conventions, any candidate who has not been found highly qualified by its advisory committee.

Third, these advisory committees should nominate, as the Mayor's Advisory Committee does, a limited number of candidates for selection, and only include those who have been found highly qualified.

And fourth, each party should agree that a majority of its advisory committee will not be selected by party leaders, but by top members of the bench and bar. Committee members should be named by community leaders, law school deans, bar association representatives, and chief or presiding judges. This is crucial to ensuring the independence and integrity of the process.

Adopting this merit selection plan would be a major step toward getting the most highly qualified men and women to serve as judges. I urge our city's party leaders -- right now -- to agree to form such committees. And I urge this task force to recommend to the Chief Judge that she also urge these reforms by political party leaders. Instituting them would help shore up their reputations -- and the public's crumbling confidence in the integrity of the parties and the city's bench.

Nearly two years of being Mayor has deepened my appreciation for the importance of the city's judiciary. Every day, judges make decisions on which the city's quality of life, and fiscal health, depend.

For example, whether we will be able to end the year with a balanced budget may hinge on the outcome of litigation involving the sale of \$500 million of bonds.

The courts have put the resolution of long-standing issues involving the city's homeless—a Herculean task—in the hands of three citizen special masters, one of whom is the chair of this task force.

And in litigation interpreting zoning laws, second-hand smoke and other health regulations, public school reorganization and financing, and multi-million dollar negligence cases involving the city, the courts frequently have the last word.

The City should not receive special favors in court. No one should.

Whether you are a suspect charged with a crime, a wife seeking custody of her children, a tenant seeking damages because the landlord has not repaired an apartment, or a company seeking millions of dollars in a breach of contract suit, you are entitled to a hearing before a fair, compassionate and highly qualified judge.

Every case, no matter who it involves, should be decided on the basis of law and fact. That job should be in the hands of the best-qualified jurists. And I believe the merit-based selection system that I have described is the best way to achieve that goal.

Let me add one other thing. The surest way that I know to stop progress is to come out four-square in favor of it, but never agree on any one improvement because it isn't perfect. You see that repeatedly again and again. It's time to get off your high horse. If you're in favor of change, the world isn't perfect, you're not going to make it perfect overnight, but you have to start someplace with some improvements and I think this is exactly what we need right now. We cannot continue to have the steady stream of stories about alleged corruption. Whether the corruption is true or not, the damage to the court system, the damage to democracy is done in the headlines of the tabloids everyday. It's just got to stop. Thank you.

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Contact:

Edward Skyler / Jordan Barowitz

(212) 788-2958