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LAW DAY

## Lack of elections in judiciary keeps politics in check

*This is the first of several articles written by state judges commemorating Law Day (May 1) in Hawai'i.*

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In our school days, most, if not all, of us were introduced to the concept of the separation of powers. We were taught that our nation was founded on the ideal of three separate and independent branches of government.

For more than two centuries — as long as our nation has existed — this separation of powers has worked to protect our freedom.

A fundamental part of our democratic system of government, at both the national and state level, is the existence of an independent judiciary — judges who are free to decide cases without political pressure, thus ensuring every citizen's individual liberties and preventing a tyranny of the majority. Our progress as a society has often been shaped by a judiciary that is free from partisan politics; a judiciary acting on the basis of what is right, not just what is popular.

Imagine if judges could be removed from the bench simply because some powerful politicians disagree with their decisions. The process of removing judges from office is deliberately difficult, precisely to ensure impartial courts free to make unpopular decisions. In the entire history of our nation, the House of Representatives has voted to impeach only 13 federal judges; only seven have actually been convicted in a trial before the Senate and removed from office.

No federal judge has ever been removed from office because Congress disagreed with the judge's judicial philosophy or with a particular decision. And in every state, procedures exist to discipline or remove from office judges who act improperly.

In Hawai'i, we are fortunate to have an appointed Judicial Selection Commission, which reviews applications of prospective judges and submits a list of qualified candidates either to the governor or to the chief justice of the Hawai'i Supreme Court, as applicable. Unlike in states that elect judges, our process is not fraught with the inherent impropriety of campaign donations by the very people who will appear before the judicial candidate.

Hawai'i's Judicial Selection Commission also reviews the requests for retention of judges whose initial terms of office have expired. And our State Constitution, article VI, section 5, gives the Supreme Court the power to reprimand, discipline, suspend, retire or remove a judge for misconduct or disability. As mandated by our Constitution, we have a Judicial Conduct Commission, which investigates allegations of misconduct or disability of state judges and makes its recommendations to the Supreme Court.

But removing judges from the bench through campaigns of misinformation and innuendo, as has occurred in several states, does a disservice to the judiciary, and ultimately to all citizens. Appellate courts, legislatures and executives each play an essential role in analyzing judicial decisions and can make changes as appropriate.

Removal of judges because of policy differences would cause chaos in our court system. Judges, whom we expect to decide cases based on a careful examination of the facts and thoughtful analysis of applicable law, would be subjected instead to a capricious political climate.

Each year, the American justice system resolves some 100 million cases: simple, complex, routine, extraordinary. Most cases are resolved successfully — fairly and impartially. Allowing a few high-profile, unrepresentative cases to guide our understanding of the justice system would be letting the tail wag the dog. American courts are held up as examples to the rest of the world. We should promote better understanding and recognition of the American judicial system to ensure that our judges are kept fair and impartial for all of us.

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