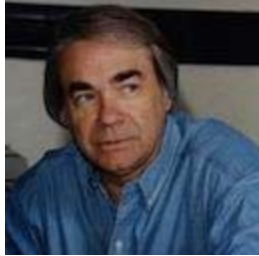




Opinion: Christie's Supreme Court Nominees in the Crosshairs

The governor's most recent nominees are smart and capable, too bad they'll be judged by their 'politics'

By **Carl Golden**, March 13, 2013 in **Opinion**



In his barnstorming town hall tour of the state, Gov. Chris Christie has relied upon a few time-tested themes that resonate with audiences, one of which is his insistence that a more equitable formula to provide state aid to local school districts can only be achieved by changing the makeup of the New Jersey Supreme Court.

The court, Christie says, has spent the last 40 years controlling education funding policy through a series of rulings ordering ever-increasing amounts of aid to at-risk districts -- commonly referred to as Abbott districts -- to the detriment of the rest.

It has legislated from the bench, he says, usurped the appropriations power of the Legislature, and led to an aid formula so badly distorted that 30 districts --- five percent of the total --- receive 60 percent of the funds.

The rulings have led to some recipient districts spending more than \$25,000 per pupil -- most of it state funds -- while other districts spend a fraction of that amount.

Despite evidence that the billions of additional dollars has failed to measurably improve student performance, the court, the governor argues, has tied the hands of the executive and legislative branches by ruling that the New Jersey Constitution required additional spending to fulfill its mandate to provide "a through and efficient system of public education."

Only by altering the composition of the court, Christie contends, can the two elected branches of government reassert their prerogatives and regain control of the appropriations process.

By adopting such a position, the governor has, in effect, transformed the Senate judicial confirmation process into a proxy vote, one in which support for a nominee is tantamount to support for the governor's funding reform agenda, while opposition suggests a willingness to accept the status quo.

The governor has made it clear that his nominees will be less inclined to legislate from the bench.

Concerns have been raised that placing individuals on the Court who may have committed themselves to a predetermined agenda undermines judicial independence, the principle that holds that decisions are based solely on constitutional interpretations free of outside political pressures.

It was this concept that convinced the framers of the 1947 constitution to reject an elected judiciary in favor of a gubernatorial nominating process and a Senate "advise and consent" role. Nominees to the bench would, the theory went, be evaluated on professional qualifications and temperament and not be required to curry political favor.

Christie, by emphasizing that changing the court is the only avenue left to revise the education aid system, has created speculation that his administration has extracted pledges from his nominees that, if confirmed, they will deny any further challenges to the formula and, joined by other Christie appointees, constitute a majority and remove the court from the process.

Critics have accused the governor of attempting to pack the Court by selecting nominees sympathetic to his

governance and who would look unfavorably on challenges to his actions.

The governor's most recent nominees -- Superior Court Judge David Bauman, presiding judge of the civil division in Monmouth County, and Board of Public Utilities Commissioner Robert M. Hanna -- are well qualified to serve on the high court. Both appear to meet the standards of intellect and conduct required of an associate justice, but the question arises whether they will be hamstrung under questioning by the Senate Judiciary Committee about their views on the school-funding issue.

Judicial nominees traditionally respond to questions in broad terms, avoiding comments or opinions on specific litigation or prior court rulings.

Given the prominence placed on the education aid issue, however, it is inevitable that both will be asked to share their thoughts on the Court's history and whether, if confirmed, they are prepared to hear further argument objectively and without preconceived notions.

Senators could easily broaden the discussion by using education aid as an example to ask whether as justices the nominees would be swayed by political considerations surrounding other issues before the court.

Having rejected two of Christie's nominees to the Court last year, the Judiciary Committee will press hard when Bauman and Hanna appear before it. The governor has already hammered the Democratic leadership for the delay in scheduling a hearing, singling out Senate President Steve Sweeney (D-Gloucester) and suggesting Sweeney forego a paycheck for failing to discharge his responsibilities.

Sweeney, who held his Democratic colleagues together to defeat Christie's earlier nominees, can be expected to play a prominent role again, and observers will be eager to learn whether the governor's crack about his not earning his pay has any affect on the proceedings.

Christie's frustrations are easily understood and not entirely misplaced. They've been shared by several of his predecessors who, while complaining the court overstepped its bounds by requiring millions in additional aid, nevertheless complied with the rulings rather than precipitate a Constitutional crisis by ignoring the court orders.

It's clear, however, that when the Judiciary Committee convenes, Christie's reform agenda will be on trial just as much as Bauman and Hanna will be. For better or worse, fair or not, the agenda is inextricably tied to the nominees.

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