



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
Joel W. Solomon United States Courthouse
900 Georgia Avenue
Chattanooga, Tennessee 37402

**JUDGES: BEHOLDEN TO THE CONSTITUTION
AND ACCOUNTABLE TO THE PEOPLE**

December 2023

“WE THE PEOPLE.”

The first three words of the United States Constitution are “We the People.” These three words are also the most important words in the entire document. For it is “the people” who “ordain[ed] and establish[ed]” the Constitution and by so doing created the government of the United States. With the words “We the People,” the Constitution recognizes that the ultimate political authority and power in the nation is “the People.”

ELECTIONS AS A MEANS OF PUBLIC CONTROL OF GOVERNMENT.

We see the centrality of the people’s political authority in the universal practice within our country of the people electing their state and federal legislative representatives. We also see it in the people’s direct election of their states’ governors and in the people’s indirect election of the president of the United States.

This desire for the public to exercise control over government officials through elections is also seen in the judiciaries of most states. A few states select all their judges through partisan elections, and most states use elections to select or retain at least some of their judges. And with elections come limits on the number of years a judge may serve before facing election again.

In states with partisan elections for judges, candidates identify by party affiliation and campaign much like any other office seeker. If enough members of the public dislike a judge’s performance once in office, they can vote him or her out of office at the next election. In some states, the voters can even recall a judge before the judge’s term of office expires if the voters become disenchanted with the judge. By these means, “We the People” exercise direct control and influence over state judges.

FEDERAL JUDGES OWE UTMOST LOYALTY TO CONSTITUTION.

The Framers of the Constitution provided that members of the House of Representatives would be chosen directly “by the People of the Several States” and senators would be chosen by elected state legislatures. U.S. Const. art. I, §§ 2, 3. (By later amendment, direct election of

senators by the people was added. U.S. Const., amd. XVII.) The Framers created an electoral college to select the president. U.S. Const. art. II, § I. And they guaranteed “a Republican Form of Government” for each state. U.S. Const. art. IV, § 4. But they took a different approach than election for the selection of federal judges.

The Framers understood that they were creating a constitution designed to govern the entire country, and they hoped it would be long lasting and enduring. They also understood that inevitably, disagreements would arise not only between people, but also between the states. In such circumstances, federal judges should not be influenced by the possibility of elections or recalls. The Framers also were aware that in some cases, state legislatures had criticized or punished state judges for their decisions. And, of course, one of the grievances explicitly stated in the Declaration of Independence was that the king had “made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.”

Thus, of overriding importance was the Framers’ understanding that the job of a federal judge should be to interpret and enforce the Constitution. This meant that these new judges would have to give their prime loyalty to the Constitution and not be beholden to a particular person, state, or constituency.

The Framers therefore settled on having the people participate indirectly in the selection of federal judges, by having the elected president nominate the judge, after which the elected Senate would have to confirm the judge. A federal judge would serve for life, freeing judges from the political pressure both of reelection campaigns and the need to cater to the desires of a reappointing authority. In the event the judge while in office committed a “high crime or misdemeanor,” the judge could be impeached and removed from office by the legislature.

CONCLUSION.

This system of appointment of federal judges has been with us for over 230 years and has served us well. Although “the People” do not directly elect them, federal judges still answer ultimately to “the People” through abiding by the people’s ultimate authority, the Constitution.

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