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Appointment Process to the Bench is not Sacrosanct

Susan Rutberg

Golden Gate University School of Law, srutberg@ggu.edu

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APPOINTMENT PROCESS TO THE BENCH IS NOT SACROSANCT

LETTERS TO THE EDITOR COLUMN

I disagree with the position taken by Justice J. Anthony Kline that Michael Nava's bid to unseat Richard Ulmer for judge of the Superior Court is a threat to judicial independence and somehow improper. ("*Judicial Election Presents Political Dangers*," July 12) There is nothing improper about a highly qualified attorney engaging in an electoral challenge to an incumbent judge of the Superior Court, a right established under the California Constitution. What *isn't* in the state constitution, or anywhere else in the law, is support for the claim that such a challenge "must be justified by the incumbent's unfitness or some other unusual consideration." The conclusion that the legal community should defend all challenged sitting judges absent special circumstances is not only legally unsupported, it also disservices the community that our courts are sworn to serve.

The appointment process is merely one avenue to the bench. It is not the only way; nor is it sacrosanct. Not too long ago, 16 years went by without the appointment of a single "out" LGBT judge in our state. Elective challenges to sitting judges have often been the sole path available to those candidates who would not be politically palatable to the Governor. Several courageous gay men and lesbians who are today long-serving and distinguished members of our Superior Court achieved their positions through the electoral process. Can we be sure that our next governor (whomever he or she may be) will appoint well qualified people from races, ethnicities and sexual orientations whose numbers in public office remain so woefully fragile?

Justice Kline, who supported one of those courageous candidates, Kevin McCarthy, when he ran against an incumbent, now claims that that was a different time. Referring to Mr. Nava's current candidacy, he takes the position that, "there is no void in need of being filled." With all due respect to Justice Kline, whom I have known and admired since his days as a Superior Court judge, I believe it is very difficult to identify a threshold beyond which diversity issues cease to be a concern. Despite concerted and longstanding efforts to bring indisputably highly qualified Latino applicants before the Governor, only three of 51 San Francisco County Superior Court judges today are Latino. Moreover, in a county with one of the largest proportions of persons of color who are members of the LGBT community, not a single Superior Court judge is a member of this group. I simply do not concur in Justice Kline's notion that while it was proper to support an LGBT judicial challenger under a prior governor whose appointments did not reflect the diversity of our community, it is an improper assault on judicial independence to support a well qualified gay lawyer of color seeking to add his unique perspective to our court at this time.

As to Mr. Nava's particular qualifications of background, education, experience, intelligence, and judgment, I note that he has extensive relevant experience, as a prosecutor in the Los Angeles city attorney's office and as a longtime appellate lawyer with state Supreme Court Justice Carlos R. Moreno. He has a reputation as an excellent lawyer and an even-tempered, judicious thinker. He is the child of a Mexican-American single mother who grew up experiencing severe poverty, and who nevertheless distinguished himself because of his intelligence and perseverance, worked his way through college, and graduated from Stanford Law School where he excelled. He is a superb writer, a gifted public speaker, an acclaimed novelist and a role model for many groups who have been marginalized in our society, and threaten to be increasingly so. As an openly gay Latino, he would present a face to the public that is sorely unrepresented both on the bench and among our state public officials. His lived experiences make him especially sensitive to concepts of equal protection and fundamental fairness. As recent national studies continue to confirm, the more judges we have whose backgrounds and life experiences are similar to those of the people who come before them, the more legitimacy our system has in the eyes of minority groups who remain deeply cynical about their chances of receiving equal justice in our courts.

For the above reasons, I support the election of Michael Nava for the San Francisco County Superior Court.

SUSAN RUTBERG

PROFESSOR OF LAW, GOLDEN GATE UNIVERSITY