

Know Before You Go: A Case for Publicly Funded Voters' Guides

CYNTHIA CANARY*

This article argues that official publicly funded voters' guides can make a significant contribution to the electoral process. They can provide voters with a better understanding of the mechanics of voting, their rights and responsibilities at the polling place, and a brief introduction to the candidates, their backgrounds, and the offices they seek. Voters' guide programs utilize a relatively modest form of public financing to provide electoral education and candidate information directly to the voters. Voters' guides are most useful in providing voters with candidate information for down ballot races, such as judicial candidates, which are often outside the public's sphere of reference and receive little coverage in the mainstream media. They also elevate the floor of election discourse for all candidates without regard to their funding ability, providing them with an opportunity to communicate with the electorate. For judicial candidates, this platform before the electorate is particularly important. Inclusion in a voters' guide allows judicial candidates to publicize their candidacy and also offers an opportunity to educate voters on why and how judicial elections differ from other elective contests.

I. INTRODUCTION

As the opening sentence of a recent ABA report on judicial campaign financing notes, “[j]udicial elections are different from political branch elections in fundamental ways.”¹ For voters and candidates alike, judicial elections are sometimes akin to a square peg being forced into a round hole. Judicial candidates, or their campaign representatives, must conduct election campaigns with all the trappings that that entails—fundraising, direct mail, public forums, advertising, and endorsements. Yet, judicial candidates—by the nature of the office, the rules by which it is bound, and the judge’s position within the broader political spectrum—face unique constraints. Aside from the recent explosion of fundraising for top court seats in some states, most judicial candidates lack sufficient funding to make much of an impression on the electorate.² Nor can the popular press be counted on to cover judicial elections. Few newspapers, and even fewer broadcast outlets, report on judicial candidates. Adding to these difficulties are the sheer number of judicial candidates on the ballot in some jurisdictions, and their position at the end of the ballot.

* Executive Director, Illinois Campaign for Political Reform.

¹ COMM’N ON PUB. FINANCING OF JUDICIAL CAMPAIGNS REPORT, ABA COMM. ON JUDICIAL INDEP. 1 (2001), available at <http://ilcampaign.org/reports/JudicialFinancingReport.pdf> [hereinafter COMM’N REPORT].

² *Cf. id.* at iv (finding that the cost of judicial campaigning is increasing, leading many candidates to take out loans, accept contributions, or drop out of the race).

Most states' judicial canons of conduct, which bind judicial candidates, require that the tenor and content of a judge's campaign be different from those of other political candidates³ (though the Supreme Court's recent ruling in *Republican Party of Minnesota v. White*⁴ may have opened the door to changes in judicial campaigning). Though the wording may vary from jurisdiction to jurisdiction, judicial candidates are generally not allowed to "make statements that commit or appear to commit the candidate with respect to cases, controversies or issues within cases that are likely to come before the court."⁵ To many observers of judicial elections, this rule is central to the protection and preservation of judicial impartiality.⁶ However, this concept and the debate around it are not widely understood by either the public or the popular press.

In some ways, maintaining the impartiality and dignity required by the ethical canons adds to the difficulty judicial candidates have establishing themselves in the mind of an electorate, which has become accustomed to rough-and-tumble style campaigning. Judicial candidates clearly face unique challenges. For example, they vie for the bench in an elective system but are expected to refrain from full-fledged partisan politics.⁷ They are required to raise funds for their campaigns but must demonstrate impartiality once on the bench.⁸ And they must go out on the campaign trail, but their discussions with the public and the media are constrained by the cases they may face.⁹

Many believe that the principles of an independent and impartial judicial system are at odds with the competitive electoral process. However, despite the lengthy effort by some reformers to introduce some form of merit selection,¹⁰ poll after poll shows that where the public has an elective judicial system, they are often determined by overwhelming majorities to retain it.¹¹ If we believe that judicial elections, like other elections, should be determined by an informed

³ See, e.g., MODEL RULES OF PROF'L CONDUCT R. 5(C)(2) (1999); ILL. SUP. CT. R. 67; see also COMM'N REPORT, *supra* note 1, at 4-7.

⁴ 536 U.S. 765 (2002).

⁵ ILL. SUP. CT. R. 67(A)(3)(d)(i).

⁶ See Roy A. Schotland, *Myth, Reality Past and Present, and Judicial Elections*, 35 IND. L. REV. 659, 665 (2002).

⁷ *Id.* at 663.

⁸ *Id.* at 664.

⁹ *Id.* at 663.

¹⁰ See COMM'N REPORT, *supra* note 1, at 3.

¹¹ See, e.g., SURVEY RESEARCH OFFICE, UNIV. OF ILL., ILLINOIS STATEWIDE SURVEY ON JUDICIAL SELECTION ISSUES 9 (2002), available at <http://ilcampaign.org/2002judicialsurvey/survey.pdf> (finding that 78.5% of 830 Illinois voters supported or strongly supported election of judges); see also Tony Mauro, *Growing Concerns over Judicial Elections, Combative State Races and Spotlight on Florida Supreme Court Add Fuel for Discussion at Upcoming Conference*, LEGAL TIMES, Nov. 27, 2000, at 18.

electorate, then we must identify opportunities for the public to familiarize themselves with and evaluate judicial candidates.

The difficulties faced by judges in the electoral context were recognized at the 2000 Summit of Chief Justices organized by the National Center for State Courts.¹² Participants called for the establishment of official voters' guides that would provide profiles on the judicial candidates.¹³ They further recommended that the federal government extend the franking privilege to the states for use in disseminating these guides.¹⁴ The ABA Commission on Public Financing of Judicial Elections seconded the call for judicial voters' guides.¹⁵

Official state-funded voters' guides provide a vehicle for judicial candidates to emerge from the bottom of the ballot and highlight their qualifications and philosophy for the electorate. These guides can also serve as a tool for familiarizing the public with the courts, the job of the judge, and the canons of judicial conduct. In short, a well-prepared, even-handed guide can help the public to develop better-informed opinions about both specific judicial candidates and the justice system.

The long-festering issue of voter education gained renewed prominence as an outgrowth of the difficult 2000 presidential election. As the manual recount progressed, it became increasingly clear that a handful of votes would determine the result.¹⁶ Florida voters and, ultimately, voters from coast to coast, began to voice concerns about how the election had been conducted and the knowledge level of the electorate.¹⁷

Hundreds of electoral reform proposals were introduced by Congress and the states following the 2000 election debacle.¹⁸ Many proposals have focused on the more technical aspects of voting, including mandating uniform election equipment and procedures, instituting grants to local election authorities, allowing

¹² *Call to Action: Statement of the National Summit on Improving Judicial Selection*, CIV. ACTION (Nat'l Ctr. for State Courts, Williamsburg, Va.), Jan. 2002, at 1, available at http://www.ncsconline.org/wc/publications/Res_JudSel_CivilActionV1N2Pub.pdf.

¹³ *Id.* at 4.

¹⁴ *Id.*

¹⁵ COMM'N REPORT, *supra* note 1, at 60, 62.

¹⁶ Newspapers from coast to coast reported on and editorialized about the apparent breakdown of the election process following the 2000 elections. See, e.g., Michael Kranish & John Aloysius Farrell, *Court Lets Count Go on Some Issues Left Undecided*, BOSTON GLOBE, Nov. 22, 2000, at A1; David G. Savage & Henry Weinstein, *Case Before Florida Justices May Turn on a Legal Phrase*, L.A. TIMES, Nov. 19, 2000, at A22.

¹⁷ See THE CONSTITUTION PROJECT, RECOMMENDATIONS FOR CONGRESSIONAL ACTION 1 (2001), available at <http://www.constitutionproject.org/eri/Congress%20Recs.pdf>; *Working Together? State and Local Election Coordination*, ELECTION REFORM BRIEFING (The Constitution Project & electionline.org, Washington, D.C.), Sept. 2002, at 3, available at <http://www.constitutionproject.org/eri/ERIPBrief802.pdf> [hereinafter *Working Together*]. See generally <http://www.electionline.org> (cataloguing election reform proposals).

¹⁸ See *Working Together*, *supra* note 17, at 2.

internet voting, expanding registration and absentee voting, refining recount procedures and so on.¹⁹ While a myriad of election reform proposals have been enacted by state legislatures around the country, local election officials, who are literally on the front lines with voters, have been responsible for much of the election reform activity that has been undertaken. While awaiting the resources necessary to update electoral equipment, many local election officials have instead made an investment in voter ease and education.²⁰ Some examples of these investments are the redesigning of ballots, the production of multi-lingual brochures and videotapes and, in some jurisdictions, voters' guides are getting new consideration.²¹ Future election seasons will offer the opportunity to assess which responses to the 2000 "crisis" prove to be the most effective.

While the 2000 elections focused national attention on voter error at the top of the ticket, it is likely that down ballot races—water commissioners, university trustees, and judges—caused voters the greatest confusion and suffered the greatest ballot falloff over the years. In Illinois, North Carolina, Texas, and other states, legislators seeking to improve and familiarize voters with the mechanics of voting were also actively lobbied by citizen groups and bar associations to develop voters' guides to educate the electorate about the candidates on the ballot.²² Major reforms to redesign ballots, update election equipment, and establish guidelines for conducting recounts are necessary in many jurisdictions, but the publication of a voters' guide could offer information and training to those who need it most—the voters.

State produced voters' guides or pamphlets are a vehicle for informing voters about both the mechanics of voting and the content of the ballot. Officially prepared and distributed voters' guides are currently available in at least thirteen states²³ (Arizona, Utah, Massachusetts, Washington, Oregon, California, Alaska, Michigan, Montana, Idaho, Nebraska, Maine, and South Dakota) and numerous counties and cities around the country. The statewide guides all provide information about voter registration, election procedures, dates, and ballot

¹⁹ See, e.g., THE CONSTITUTION PROJECT, *supra* note 17, at 5–6, 8; *Working Together*, *supra* note 17, at 5–7.

²⁰ See, e.g., NAT'L ASS'N OF SEC'YS OF STATE, NEW MILLENNIUM SURVEY: AMERICAN YOUTH ATTITUDES ON POLITICS, CITIZENSHIP, GOVERNMENT & VOTING (1999), <http://www.stateofthevote.org/survey/index.htm>.

²¹ Voters' guide legislation was proposed in both Illinois and North Carolina in 2001. See H.B. 1772, 92nd Gen. Assem., Reg. Sess. (Ill. 2001); H.B. 1171, 2001 Gen. Assem., Reg. Sess. (N.C. 2001).

²² See VOTERS' GUIDE TASK FORCE, ILL. CAMPAIGN FOR POLITICAL REFORM, FINAL REPORT OF THE ILLINOIS VOTERS' GUIDE TASK FORCE 3 (2001), available at <http://ilcampaign.org/reports/vgtaskforce.pdf>; Abbey Ammerman, *State Voter Guides*, OLR RESEARCH REPORT (Conn. Office of Legislative Research), Aug. 23, 2001, at <http://www.cga.state.ct.us/2001/rpt/olr/htm/2001-r-0545.htm>.

²³ See Ammerman, *supra* note 22.

measures; eight of them also provide information on the candidates such as brief biographies or candidate prepared statements.²⁴ Municipal and county guides differ on their inclusion of candidate statements, but all include basic election information.²⁵ Virtually all guides that are prepared in print are also available online.²⁶

Of course, voters' guides are not a new idea. They have appeared in many variations over the years. Civic organizations, like the League of Women Voters, have produced excellent non-partisan guides for many years. However, the publication, distribution, and comprehensiveness of these guides is uneven as a result of the vagaries of volunteer labor and the uncertainty of funding. Many bar associations do a thorough job interviewing and evaluating judicial candidates. This information is available to the public, but, again, the financial reality of actually getting the ratings into every household has presented a barrier to full and efficient distribution. Likewise, many newspapers have traditionally published pullout voters' guide sections for their readers. While some papers still do so, many election supplements have fallen victim to cost-cutting measures.

Issue groups have also been active in producing voters' guides. Organizations ranging from the Conservation Voters to the Christian Coalition have mobilized to prepare and produce literally millions of guides evaluating the candidates based on their adherence to the organizations' issue platform.²⁷ The Christian Coalition's guide was the subject of IRS scrutiny in the mid-nineties.²⁸ The Coalition argued that their guide was nonpartisan, since they did not expressly endorse candidates and could, therefore, be distributed in churches, which are tax-exempt organizations and thus banned from participating in electioneering of any type.²⁹ The IRS countered that distributing a guide that exhibits *any* bias in its content or presentation, either for or against a candidate, is electioneering.³⁰ Legal questions aside, most of the guides produced by these issue groups are not a good fit for judicial candidates in that they attempt to elicit candidate stands on often controversial issues.

²⁴ *Id.*

²⁵ ILL. CAMPAIGN FOR POLITICAL REFORM, *supra* note 22, at 4–5.

²⁶ See Ammerman, *supra* note 22, at tbl.2; Kim Alexander, *State Voter Guides Flourish on the Web!* (Cal. Voter Found.), Oct. 24, 2000, at <http://www.calvoter.org/cvfnews/cvfnews102400.html>.

²⁷ See Milton Cerny & Albert G. Lauber, Jr., *Urgent Memorandum for Churches Concerning Distribution of "Voter Guides" in 2000 Presidential and Congressional Elections*, <http://www.au.org/cerny.htm> (Sept.–Oct. 2000); Mathew D. Staver, *Nonpartisan Voter Guides for Churches and Nonprofit Organizations*, <http://www.lc.org/OldResources/voter.htm> (last visited Nov. 25, 2002).

²⁸ See Cerny & Lauber, *supra* note 27.

²⁹ *Id.*

³⁰ *Id.*

With the exception of some of the Western states, which have been publishing their guides since the early 1900s,³¹ state published voters' guides are a relatively new idea, but one that is rapidly gaining support as a doable election reform measure.³² Interestingly, voters' guides have been a particularly popular tool in some of the elections that the United Nations has overseen in emerging democracies, in states such as South Africa, where the franchise has been expanded to include new categories of voters who may be unfamiliar with the polling procedure.³³

Voters' guides that are state-funded and prepared offer several advantages over their privately produced counterparts. First, the production and distribution of a voters' guide can run from one to five million dollars, depending on the size of the state and the complexity of the guide.³⁴ Obviously, this exceeds the grasp of most private organizations, but represents only a small percentage of a state budget. Second, the state is responsible for the administration of elections and is in a position to compile the district maps, sample ballots, and other voter information that makes up the guide. The state is also able to approach the task of preparing a guide without bias, as it does when running elections (although policies must be established safeguarding this role). Finally, publishing materials and preparing statewide mailings are tasks with which the state is familiar and has the staff and physical resources to undertake.

One reason for the growing interest in voters' guides in this country is concern over declining voter participation.³⁵ Voter turnout nationwide is declining—a trend that will be fueled if voter confidence in the accuracy of elections declines. People report that they are turned off by the increasingly negative tone of elections.³⁶ Voters complain about being buried in political direct-mail, while struggling to find accurate, independent sources of information

³¹ ILL. CAMPAIGN FOR POLITICAL REFORM, *supra* note 22, at 4.

³² *Id.*; Report of the Special Commission to Limit Campaign Expenditures 31 (1998) (unpublished report) (on file with the author); *see also supra* notes 21–23.

³³ For access to a variety of voter education tools used in these elections, see the ACE (Administration and Cost of Elections) Project, a joint endeavor of the United Nations Department of Economic and Social Affairs (UN-DESA); the International Foundation for Election Systems (IFES); and the International Institute for Democracy and Electoral Assistance (IDEA), at <http://www.aceproject.org/main/english/default.htm> (last modified Oct. 15, 2002).

³⁴ *See* Ammerman, *supra* note 22; ILL. CAMPAIGN FOR POLITICAL REFORM, *supra* note 22, at 8–9.

³⁵ Voter turnout in federal elections fluctuates. In the past decade approximately 50% of the eligible population cast a vote during presidential election years. This fell to approximately 36% for off-year elections. *See* FED. ELECTION COMM'N, NATIONAL VOTER TURNOUT IN FEDERAL ELECTIONS: 1960–2000, available at www.infoplease.com/ipa/ao781453.html (last visited Nov. 19, 2002); U.S. CENSUS BUREAU, VOTING AND REGISTRATION, at <http://www.census.gov/population/www/socdemo/voting.html> (last modified Aug. 1, 2002).

³⁶ NAT'L ASS'N OF SEC'YS OF STATE, *supra* note 20, § 5.

about candidates and issues.³⁷ Specific complaints are voiced, at least anecdotally, by voters about their unfamiliarity with the judicial ballot and the difficulty that they have distinguishing between candidates. Voters may have some awareness that these candidates are evaluated by bar associations, but proactively seeking that information out is something that many voters neglect to do.

According to a recent study by the National Association of Secretaries of State, less than one in five eighteen to twenty-four year-olds vote.³⁸ Of these non-voters, 25% cited a lack of information as their primary reason for not voting.³⁹ Again, it is not a significant leap to assume that voters who cite a lack of information concerning the top of the ticket candidates are woefully uninformed about the judicial candidates who hold up the rear of the ballot. Clearly, we need to be concerned when such a large percentage of this generation of new voters determines that the electoral system is not relevant enough to merit their participation.

Judicial candidates likely face an additional level of non-participation from ballot falloff from the top of the ticket. A 1999 study found that the trend towards leaving the ballot booth without casting a vote for judicial candidates is not as pronounced as it once was.⁴⁰ However, this analysis of voter participation in judicial retention races still found a 29.5% falloff in 1998.⁴¹

It is unlikely that the availability of a voters' guide will entice a hardcore non-voter to the polls. However, voters who skip certain elections, or fail to cast a full ballot for lack of information, may actually be more motivated to vote and increase the level of their participation as the result of a guide.

II. RESEARCH FINDINGS

Empirical research shows that voters would view a state-prepared voters' guide as a useful educational aid during elections.⁴² Some of the research discussed below does not specifically explore the value of voters' guides for

³⁷ *Id.*; see also STEPHEN ANSOLABEHRE & SHANTO IYENGAR, *GOING NEGATIVE: HOW ATTACK ADS SHRINK AND POLARIZE THE ELECTORATE* (1995); JACK DOPPELT & ELLEN SHEARER, *NONVOTERS: AMERICA'S NO-SHOWS* (1999); THOMAS E. PATTERSON, *THE VANISHING VOTER: PUBLIC INVOLVEMENT IN AN AGE OF UNCERTAINTY* (2002).

³⁸ NAT'L ASS'N OF SEC'YS OF STATE, *supra* note 20, § 1.

³⁹ *Id.* § 3.

⁴⁰ Larry Aspin, *Trends in Judicial Retention Elections, 1964-1998*, 83 *JUDICATURE* 79, 79, 81 (1999).

⁴¹ *Id.*

⁴² See Roy A. Schotland, *Elective Judges' Campaign Financing: Are State Judges' Robes the Emperor's Clothes of American Democracy?*, 2 *J.L. & POL.* 57 (1985); see, e.g., COALITION FOR CONSUMER RIGHTS, *THE 1999 ANNUAL SURVEY OF ILLINOIS VOTERS 2* (1999); ILL. CAMPAIGN FOR POLITICAL REFORM, *supra* note 22, at 4.

judicial candidates and elections. However, this author believes that the findings are informative and generally applicable and, thus, includes them.

In his 1985 article, Professor Roy Schotland cited research showing the value that the public placed on voters' guides in judicial elections.⁴³ Oregon and Washington, two of the states with long-standing guides, surveyed voters in 1982 to measure their feelings toward the guides.⁴⁴ Oregon began issuing guides in 1903, and started including candidate biographies in 1909; Washington's guide dates to 1912, and is available only for the general election.⁴⁵ In both states, voters said that the guide was their most important source of information about the election—true of 49% of Washington voters and 64% of Oregon voters.⁴⁶ Bar association surveys, editorials, and advertising ranked far behind the pamphlet as sources of information by voters in both states.⁴⁷

A Cook County pilot project was conducted in the February 1998 municipal elections.⁴⁸ This pilot featured twenty-three candidates in four towns.⁴⁹ All of the candidates agreed to cooperate voluntarily in the voters' guide pilot project, which was funded by the Joyce Foundation and administered by the Cook County Clerk, the League of Women Voters of Illinois, and the University of Illinois-Chicago Department of Political Science.⁵⁰ The project distributed booklets containing candidate-prepared biographies (unedited), polling place addresses, and absentee ballot information.⁵¹ The booklets were mailed to all 32,000 registered voters in the four towns, and on election day seven hundred voters were randomly chosen for a survey as they exited their polling place.⁵²

The Cook County survey found that 90% of voters who received the guide read at least part of it, while 60% reported reading all or most of it.⁵³ Sixty percent of the voters felt the guide provided information not otherwise obtainable, and 75% of the voters reported using the guide second only to newspapers (82%) as a source of voter information.⁵⁴ Sixty-two percent of the voters wanted a statewide guide provided to every Illinois voter, while only 27% did not.⁵⁵

⁴³ Schotland, *supra* note 42, at 163–67.

⁴⁴ ILL. CAMPAIGN FOR ELECTION REFORM, *supra* note 22, at 4.

⁴⁵ *Id.*

⁴⁶ Schotland, *supra* note 42, at 163–66.

⁴⁷ *Id.*

⁴⁸ Barry Rundquist, Report: The Voter Guide Project (1998) (unpublished report) (on file with the author).

⁴⁹ *Id.* at 1.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ Rundquist, *supra* note 48, at 2.

⁵⁴ *Id.* at 1.

⁵⁵ *Id.* at 7.

Survey respondents in the Cook County study were also asked to comment on the type of candidate information that they found most informative.⁵⁶ Among the information that they found most useful in making electoral decisions was the candidate's personal biography, prior experience, party affiliation, sources of campaign contributions, and endorsements.⁵⁷

Polling questions exploring the general value of these pamphlets in informing voters have undoubtedly been explored in many states, although the data I cite are from Illinois. A poll of 254 adults across Illinois by the Institute of Government and Public Affairs at the University of Illinois asked, "how would you feel about the state providing an election booklet for each household with information about the candidates?"⁵⁸ Forty percent of all respondents strongly supported such booklets, while 37% offered weaker support; only 20% were opposed.⁵⁹ Due to its relatively small size, the poll had a margin of error of 4.5%; nonetheless, support for guides runs four-to-one.

A broader poll of 801 voters across Illinois was conducted in 1999, finding equally strong support, even when told that the cost of the guides would be borne by taxpayers.⁶⁰ Voters found most likely to support a guide were those working full-time (67.5%), having graduate degrees (80.0%) or children at home (69.5%), and those earning higher-than-average incomes (66.0%).⁶¹ Pluralities of all age and income groups, political parties, and age clusters supported the guides.⁶²

A national poll conducted late last year by Greenberg Quinlan Rosner Research and American Viewpoint for the Justice at Stake project looked at the perceived value of and support for voters' guides in judicial elections among members of the general public and state court judges.⁶³ The poll of 2,428 state court judges found that 81% of those surveyed believed that the states should provide voters' guides prior to judicial elections to inform voters about the candidates on the ballot.⁶⁴ When the same questions were posed to 1,000 voters in a national telephone survey, they indicated 92% support for a voters' guide.⁶⁵

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ See ILL. CAMPAIGN FOR POLITICAL REFORM, *supra* note 22, at 4.

⁵⁹ *Id.*

⁶⁰ *Id.* (finding that 62% of those polled supported a taxpayer-supported guide).

⁶¹ *Id.*

⁶² *Id.*

⁶³ AM. VIEWPOINT & GREENBERG QUINLAN ROSNER RESEARCH, INC., JUSTICE AT STAKE FREQUENCY QUESTIONNAIRE (2001), available at <http://faircourts.org/files/JASNationalSurveyResults.pdf> [hereinafter GENERAL PUBLIC QUESTIONNAIRE]; AM. VIEWPOINT & GREENBERG QUINLAN ROSNER RESEARCH, INC., JUSTICE AT STAKE—STATE JUDGES FREQUENCY QUESTIONNAIRE (2002), available at <http://faircourts.org/files/JASJudgesSurveyResults.pdf> [hereinafter STATE JUDGES QUESTIONNAIRE].

⁶⁴ STATE JUDGES QUESTIONNAIRE, *supra* note 63, at 10.

⁶⁵ GENERAL PUBLIC QUESTIONNAIRE, *supra* note 63, at 9.

A February 2002 poll of 830 Illinois voters on judicial selection issues further supports these findings, while casting some additional light on the sources of public confusion.⁶⁶ Seventy-eight percent of respondents said they lacked information in making decisions about Illinois Supreme Court candidates.⁶⁷ Of respondents who indicated that they did not always vote in judicial elections, the single biggest reason noted (54%) was a lack of information.⁶⁸ When queried on possible ways to improve judicial elections in Illinois, the single most popular proposal was for an official state voters' guide, which received nearly 80% support.⁶⁹

Interestingly, the survey indicated that voters might be confused about what type of information they should be expecting from judicial candidates.⁷⁰ Although respondents seemed concerned about the politicization of judicial candidates, 83% believed that judicial candidates should tell voters where they stand on controversial issues during their campaigns.⁷¹ These data support the suspicion that public understanding is limited as to the rules guiding judicial campaign conduct and the reasons for them.

III. THE ILLINOIS VOTERS' GUIDE TASK FORCE: A MODEL

The reasons for declining participation run the gamut from lack of interest to lack of information, but our system cannot thrive without an engaged and informed electorate. Against this backdrop, the Illinois Campaign for Political Reform established a bipartisan task force in the spring of 2000 to study the advisability of introducing a statewide voters' guide in Illinois.⁷²

The Task Force was co-chaired by Republican State Treasurer Judy Baar Topinka and Democratic Secretary of State Jesse White.⁷³ The twenty-four member task force included legislators, attorneys, election officials, academics, civic leaders and representatives from the labor and business community.⁷⁴ Though many of the recommendations that follow were originally formulated with Illinois in mind, this author offers them in the hope that they may provide useful guidelines to other states considering development of a voters' guide.

⁶⁶ See SURVEY RESEARCH OFFICE, UNIV. OF ILL., *supra* note 11.

⁶⁷ *Id.* at 12.

⁶⁸ *Id.* at 13.

⁶⁹ *Id.* at 10.

⁷⁰ *Id.* at 16, 24.

⁷¹ *Id.* at 9.

⁷² Kate Clements, *State Voter Guide May Up Turnout*, NEWS-GAZETTE ONLINE (Champaign, Ill.), May 19, 2001, at <http://www.news-gazette.com/story.cfm?Number=9398>.

⁷³ *Id.*

⁷⁴ See ILL. CAMPAIGN FOR POLITICAL REFORM, *supra* note 22, at 20.

The Task Force was not specifically established to address questions related to voter education about judicial campaigns.⁷⁵ However, during the course of deliberations, significant consideration was directed at developing mechanisms to provide voters with information about those candidates with whom they had the least familiarity—specifically, Illinois Supreme Court justices.⁷⁶

The Illinois Task Force found that voters' guides can be an invaluable tool for familiarizing voters with the election equipment they will be using to cast their ballots, as well as informing them of their rights and responsibilities in the polling place.⁷⁷ Thus, not only can a voters' guide help voters make informed personal electoral decisions, the publication can also help them to correctly cast their ballots. Task Force members heard testimony that voters' guides are particularly beneficial to first time and irregular voters who lack comfort with the operation of election equipment.⁷⁸ They are also extremely useful in providing the electorate with information about down ballot candidates who are frequently less familiar to the voters. Moreover, the Illinois Voters' Guide Task Force recommended that the state provide ballot and polling place information; salary, term, and job description for the office sought; candidate photos, statements,⁷⁹ and biographical data; and the text of, and arguments for and against, ballot measures in any voters' guide that it might produce.⁸⁰

The Task Force recognized that experience of other states shows that the design of a voters' guide faces two competing interests: completeness tends to come at the cost of usability.⁸¹ A guide with every candidate on the ballot is necessarily overly long and complicated; a shorter guide must exclude many candidates, such as judicial candidates at the bottom of the ballot, about whom voters' say they have the greatest need for more information.⁸² To achieve the best possible balance between these two interests, the Task Force recommended that the appropriate election authority produce a guide with information on candidates for president, U.S. Senate, constitutional offices and the state supreme court.⁸³ This would make the guide useable by voters around the state and include candidates for each of the three branches of government.

⁷⁵ Clements, *supra* note 72.

⁷⁶ *Cf.* Press Release, Ill. Voters' Guide Task Force, Voters' Guide Would Increase Awareness of Election Procedures and Candidates (May 18, 2001), at <http://ilcampaign.org/votersguide/pressrelease.pdf>; SURVEY RESEARCH OFFICE, UNIV. OF ILL., *supra* note 11, at 12.

⁷⁷ ILL. CAMPAIGN FOR POLITICAL REFORM, *supra* note 22, at 3.

⁷⁸ *Cf. id.* at 6.

⁷⁹ The Task Force recommended that the election authority only edit for length—not for grammar, punctuation, or syntax—and that it include a disclaimer explaining the standards by which the statements were edited. *Id.* at 7.

⁸⁰ *Id.*

⁸¹ *Id.* at 5.

⁸² SURVEY RESEARCH OFFICE, UNIV. OF ILL., *supra* note 11, at 12.

⁸³ ILL. CAMPAIGN FOR POLITICAL REFORM, *supra* note 22, at 5.

To provide voters with their district-specific information on other races, the Oregon model should be followed.⁸⁴ In short, this calls for executing an intergovernmental agreement with participating local election authorities. Such an agreement allows local election authorities to create voters' guide inserts with information on local candidates using the same format as the state guide. The local guide could include candidates for state legislature, congress, lower judicial offices, and county offices. The local guide might also include maps of legislative and judicial districts to help voters determine which candidates will be on their ballots.⁸⁵ All voters would thus receive guides with candidates specifically on their ballots, and the local election authority would be able to provide information on local candidates in the same guide as the statewide candidates.

Voters say that some of the most useful data in a voters' guide are the general background data about offices on the ballot, including the duties, term of office, and base salary.⁸⁶ This information typically includes education and professional background, a personal statement from the candidate and a photograph of the candidate. Contact information including the candidate's campaign headquarters, phone and website is also typically provided.⁸⁷ Most states that publish guides charge candidates a nominal fee, typically \$300–500, to include information beyond their name.⁸⁸

To minimize the risk of another Florida situation, the Task Force recommended that the guide educate voters about spoiled ballots, absentee ballots, and, if possible, the shape and design of the ballot.⁸⁹ The statewide guide should include a list of frequently asked questions, as well as information about registering to vote and a National Voter Registration Act form. The Task Force recommended that the local guide also have detailed information on how to use the voting equipment employed in that area, a specimen ballot, forms for voters to

⁸⁴ *Id.* The Oregon model ensures that:

(1) the guide that arrives at voters mailboxes would have the smallest number of candidates who are not on the voter's ballot; (2) the cost of producing the guide would be distributed across state and local agencies; (3) voters would receive the most detailed guide possible with the lightest administrative burden on the public agencies producing the guides, and (4) that the guide would be produced according to uniform high quality standards.

Id. at 5–6.

⁸⁵ *Id.* at 5.

⁸⁶ *Id.* at 6.

⁸⁷ ILL. CAMPAIGN FOR POLITICAL REFORM, *supra* note 22, at 6.

⁸⁸ The Illinois Task Force supported charging a nominal fee for candidate inclusion in a voters' guide, recognizing that such fees could provide a small, but politically relevant revenue stream to support publication costs. They strongly cautioned against excessive fees, suggesting large fees would deter candidate participation. *Id.*

⁸⁹ *Id.*

report a change of address, how to apply to become a deputy voter registrar or a judge of election, and how to apply for an absentee ballot.⁹⁰

Most states mail their guides to all households to ensure that voters who register immediately prior to the election receive the guide. The Task Force recommended sending one guide to each household in the state to avoid the cost of duplicative mailings.⁹¹ It was recommended that additional copies of the statewide version of the guide be made available at state offices, libraries and other public facilities.⁹²

Admittedly, internet versions of voters' guides could be tailored specifically to any given address, merging the local and statewide guide into a simple variation of a specimen ballot. However, the Task Force felt that too few households regularly use the internet to make an internet-only guide a practical way of reaching most voters.⁹³ Nevertheless, the Task Force accepted that budgetary realities could in some cases make an online guide the only viable alternative.⁹⁴ Regardless of which medium a state may choose, election authorities must be cognizant of the value of design when producing voters' guides. Most notably, clear graphics, photographs, and attention to typestyle are important to increase significantly the readability, and thus the use of the guide.⁹⁵

Projecting the cost of guides is difficult. In Illinois, the Task Force estimated that the statewide portion would cost around three million dollars but that local inserts would vary in cost from one local authority to another (depending upon the number of voters in the district and the number of state legislative, judicial, and congressional districts that run through the jurisdiction).⁹⁶ Assuming that the guide includes maps of election districts, a list of polling places, voting equipment instructions, and related information, with personal statements and office descriptions similar to those of the statewide guide, the Task Force projected that

⁹⁰ *Id.*

⁹¹ *Id.* (Consideration was given to distributing guides to only registered voters, but the idea was rejected in part because doing so was seen as reinforcing non-voting behavior.)

⁹² *Id.* These would include copies in Braille or on cassette for the visually impaired, and guides in other languages where local populations spoke non-English languages (the Task Force recommended using Justice Department guidelines for such determinations). *Id.* at 7.

⁹³ ILL. CAMPAIGN FOR POLITICAL REFORM, *supra* note 22, at 6.

⁹⁴ *Id.*; *see, e.g., supra* note 21.

⁹⁵ ILL. CAMPAIGN FOR POLITICAL REFORM, *supra* note 22, at 6.

⁹⁶ For example, the Task Force projected that printing and mailing voters' guides to every household in Illinois would cost between \$1,200,000 and \$2,000,000. It estimated that a guide would run 32 pages in length, including voter information, 400 words each for biographies and personal statements from three candidates for each of the 6 statewide constitutional officers, plus 3 U.S. Senate candidates, and candidates for the Illinois Supreme Court, and an additional 100 word description of each office. *Id.*; *see also* H.B. 1982, 92nd Gen. Assem., Reg. Sess. (Ill. 2001).

in Illinois the typical local guide would be about twenty-four pages long.⁹⁷ Costs for printing and inserting these local guides into the statewide guide and mailing to all households in Illinois would add about \$800,000 to the total cost.⁹⁸ According to the Task Force recommendation, the local election authorities would carry these costs.⁹⁹

The Illinois Voters' Guide Task Force brought together a diverse group of influential individuals who conceived a strong proposal in support of a statewide voters' guide. Their project generated editorial and popular support. It also resulted in a legislative proposal that closely tracked the recommendations outlined above.¹⁰⁰ The Voters' guide bill won passage in the Illinois House, and appeared to be on a trajectory to become law, when Illinois, like many states, found itself with a sharp budget deficit. When it became apparent that legislation with a two million dollar price tag could not be passed, an alternate bill was proposed, making the publication of the guide internet only.¹⁰¹ That legislation is now pending.

IV. CONCLUSION

Clearly, voters need easy access to basic, straightforward information about candidates for public office, how to participate in the electoral system, and how to cast a ballot. Voters' guides are particularly valuable for educating voters and potential voters about the candidates and races that receive less media coverage. Jurisdictions that elect judges and have struggled to improve public understanding of and participation in judicial elections may find voters' guides to be a particularly helpful tool. Although the actual impact of voters' guides as a tool for increasing participation in the political process has been largely untested, the anecdotal evidence of their usefulness and the public demand for straightforward, informative election information is overwhelming. Voters' guides probably will not lure non-voters to the polls, but they may help those who do not currently vote a full ballot.

While voters' guides will not solve all of the problems of our electoral system, the preliminary evidence suggests that they can offer an efficient and relatively cost effective means of providing voters with the information they need to make choices about candidates and accurately cast their ballots. The opportunity to improve public understanding of the judiciary and judicial elections suggests that the voters' guide model is an experiment well worth pursuing.

⁹⁷ ILL. CAMPAIGN FOR POLITICAL REFORM, *supra* note 22, at 8.

⁹⁸ *Id.*

⁹⁹ *Id.* at 9.

¹⁰⁰ H.B. 1982, 92nd Gen. Assem., Reg. Sess. (Ill. 2001).

¹⁰¹ See S.B. 1643, 92nd Gen. Assem., Reg. Sess. (Ill. 2001).