MORE TIMES GUEST OPINIONS

Controversies over judicial nominations — particularly those involving the Supreme Court — flare up sporadically, generating a great deal of political rhetoric and self-righteous posturing but little in the way of serious result-producing debate over steps to alter and improve the existing system.

The issue erupted with considerable force in May 2010, when Gov. Christie, in office for four months, refused to renominate Associate Justice John Wallace — the only African American on the Supreme Court — to a tenured term. It was the first time since the adoption of the state's 1947 constitution that a sitting justice was denied tenure.

Christie's action so enraged Senate President Steve Sweeney of Gloucester County (also, coincidentally, Wallace's home county), that he refused for nearly a year to schedule consideration of the governor's nominee to replace Wallace.

The uproar over Wallace was followed by the Senate Judiciary Committee's rejection of two of the governor's later nominees, an ongoing delay of more than eight months — with no end in sight — to act on Christie's most recent two selections, and the governor's decision to replace a sitting associate justice rather than subject her to questioning by what he characterized as "the animals" in the Senate.

Christie has continued to publicly bludgeon the justices as activists who'd rather legislate from the bench than interpret the constitution. He pounded one justice who expressed concern over politicization of the judiciary by a chief executive who could deny tenure to judges whose decisions he didn't like.

Officers of the state Bar Association, as well as several former judges and judiciary officials, fretted publicly that the court system had become just another campaign stop resembling a candidate's shaking hands at a local diner.

The judicial selection process is remarkably straightforward, consuming fewer than 30 words in Article VI, Section VI, of the state constitution: "The governor shall nominate, with the advice and consent of the Senate, the Chief Justice, and Associate Justices of the Supreme Court, and the judges of the Superior Court."

There are no contextual escape hatches, no "in the alternative" loopholes. At the same time, there is neither a timetable for Senate action nor a requirement that it act at all.
With the Senate's cherished tradition of "courtesy," allowing a single senator to block consideration of any gubernatorial nominee from his or her home county, the system is ripe for stalemate.

Governors of both parties have griped and grumbled when confronted with an obdurate senator's use of courtesy to delay confirmation of a nominee, but overcame the obstacle by reaching some sort of accommodation with the recalcitrant legislator.

There have been periodic efforts to eliminate the courtesy practice through a constitutional amendment requiring Senate action on nominations within a specific time period — 45 to 60 days is usually mentioned — and providing for automatic confirmation if it failed to do so.

The fate of all these suggestions has been a burial so deep in the basement that the Statehouse freight elevator doesn't descend that far.

While the proposals for a timetable have been directed at overcoming courtesy, it would also eliminate the lengthy delays in considering nominees in the absence of an invocation of courtesy, such as the one involved in the Wallace controversy and the recent two nominees who've been in limbo since the spring.

Senatorial courtesy is a bipartisan weapon that neither Democrat nor Republican is inclined to surrender. It is, they argue, the only significant tool at their disposal in dealing with the governor and extracting concessions from the chief executive.

Imposing a timetable would strengthen the governor's hand, allowing him or her to simply wait out the Senate until the specified time expires and the nominee is approved.

At the same time, the Senate would gain credibility and stature by acting in the spirit of the "advice and consent" provision of the constitution and fulfilling what the public sees as legislators' sworn obligation: casting a vote for or against a gubernatorial nominee in the open and in full view of voters rather than hiding behind an unwritten and undemocratic tradition.

Whether it be associate justices of the Supreme Court, judges of the Superior Court or any of the hundreds of gubernatorial nominees subject to Senate confirmation, the mandate on the Senate would be the same: If its members don't approve of the individual, they should vote their belief and express the courage of their convictions.

A timetable is an opportunity for this Legislature — as there has been for legislatures past — to devise a system fair to the nominees, eliminate contrivances such as senatorial courtesy, demonstrate greater openness in their actions and enhance public trust.

Ah, but don't hold your breath.

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