

Grading the Legislature

Senate Bill 475 – Making West Virginia Supreme Court justice elections non-partisan Grade: A+

West Virginia is frequently at or near the bottom in rankings of state judicial quality. One of these polls, conducted annually for the Institute for Legal Reform, places West Virginia's liability system dead last amongst the fifty states this year after ranking us 49th for the previous four years.

Researchers have analyzed how elections impact the quality of state judicial systems. State justices can either be appointed or elected, and elections can either be partisan or non-partisan. While states that avoid elections altogether tend to have the best judicial systems, those that have non-partisan elections tend to rank higher than those with partisan elections. Creating a non-partisan system of electing judges will improve what has become the single-worst state liability system in the country.

One of the ideas put forth by the Founders in composing the Constitution is that of separation of powers. The three branches of American government were originally designed to complement each other by restraining any one specific arm from becoming particularly powerful. The role of the judiciary was to provide an ideologically neutral litmus by which legislation and laws were to be judged. Directly imposing partisanship upon the process by which these judges are selected undoubtedly cuts against the idea of an independent, impartial judiciary.

While complete neutrality from all judges is difficult to achieve, for certain, eliminating partisan politics from the judicial system is a step in the right direction. Consider the 2004 Supreme Court election in West Virginia, when each candidate each had significant political support. Labor interests supported the Democratic candidate, Warren McGraw, while business interests rallied around the Republican candidate, Brent Benjamin. As important litigation concerning the relationship of business and labor unions would certainly arise during the 12-year term over which the candidates were competing, the respective sides were effectively competing for favorable judicial outcomes through the political process, not through the trial process. This is not how a strong, independent judiciary functions.

Laws and rights are strong only insofar as can be enforced through a sound legal system. Strengthening the judicial system here in West Virginia is a must in order to be able to secure the underpinnings of a viable economic system based in private property rights and minimal takings—the politically-motivated takings through a weak judicial system *or* takings by an expansive state government. SB 475 is a step towards that long term goal.

House Bill 4447 – Healthy Families Act, or the Unhealthy Businesses Act, which establishes minimum amount of sick leave for all employees Grade: F

Oftentimes, public sentiment is quite favorable when the government interferes in the labor market. The general public believes that their representatives are working for “the little guy,” and that their benefit comes and nobody’s expense—thus, good policy. This incorrect line of reasoning often accompanies minimum wage laws, and HB 4447, which mandates that companies provide at least seven days of sick leave for all employees working at least thirty hours per week, is essentially no different than a hike in the minimum wage.

One mistake often made in assessing the impact of the minimum wage is assuming that all other variables concerning the employee remain the same after the change goes into effect. For example, a minimum wage worker employed for 40 hours per week prior to the minimum wage hike will continue to work 40 hours per week after the mandated wage raise. Therefore, due to the rise in wages, the worker must be better off.

Companies, however, will adjust to the required higher wages on a number of margins. This behavior is not antagonistic by companies towards their employees; instead, companies want to retain happier, more productive employees despite the tangled regulatory web that makes employing workers more costly. In order to keep their employees, companies could employ them for fewer hours. Conversely, production processes could become more capital-intensive, non-wage perks could be cut, or working environments could become less hospitable. The value of the entire employment package offered to the employee by the company can actually change very little; instead, it is the specific composition of the package that has changed. Whereby Sally enjoyed a lower paycheck but better benefits and a more comfortable work environment prior to the passage of the minimum wage increase, she now brings home a larger paycheck at the expense of fewer non-wage benefits.

The change in the number of days required for sick leave has the same impact. Companies can be forced to offer more sick leave days, but could in turn offer fewer vacation days, lower pay, or longer hours. Again, it is not disdain for the employee that causes companies to modify their compensation packages, but rather the desire to retain their valuable services in the face of legislation raising the cost of employing labor. Forcing companies to modify how they compensate their workers generates no benefit for anyone involved—not the laborers it claims to help, and certainly not the companies themselves.

HB 4447 makes workers no better off, and the unneeded regulation harms existing businesses, creates the incentive for firms to search out more hospitable operating environments in other states, repels companies from West Virginia, and further harms our already nation-worst business climate.

Matt E. Ryan is the Charles G. Koch Doctoral Fellow at West Virginia University and is an editor of *Unleashing Capitalism: Why Prosperity Stops at the West Virginia Border and How to Fix It*. He can be reached at: matt.ryan@mail.wvu.edu.