

**Senate Counsel, Research,
and Fiscal Analysis**

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Senate

State of Minnesota

January 31, 2006

To: Senator Charles W. Wiger, Chair
Committee on Elections
Senator Don Betzold, Chair
Judiciary Committee

From: Peter S. Wattson, Senate Counsel *P.S.W.*
651/296-3812
Kathy Pontius, Senate Counsel *K.P.*
651/296-4394

Subj: Judicial Selection Bills

Following is a list of bills on selection of judges that have been introduced in the Senate or House of Representatives since 1989.

1989-90 No bills introduced

1991-92 No bills introduced

1993-94

SF 740 (Sams)/HF 347 (Krueger) - appointed by Governor until mandatory retirement age - referred to Ethics & Campaign Reform

1995-96 No bills introduced

1997-98

SF 789 (Flynn)/HF 1077 (McGuire) - judicial retention elections - referred to Judiciary

This is the only time the Senate Judiciary Committee has had hearings on this issue. The introduced bill would have adopted the "Missouri plan" (initial appointments by Governor from candidates submitted by judicial selection commission and retention elections) but the author's delete-everything amendment set up a task force on judicial selection and retention. The bill passed the committee and full Senate but never had a hearing in the House.

Senator Charles W. Wiger, Chair
Committee on Elections
January 31, 2006
Page 2

SF 1957 (Neuville) - appointed by Governor with advice and consent of Senate for eight-year term - referred to Elections

1999-2000 No bills introduced

2001-2002 No bills introduced

2003-2004

HF 40 (Lipman) - appointed by Governor for three-year term - referred to Governmental Operations

SF 599 (Neuville) - appointed by Governor with advice and consent of Senate for ten-year term - referred to Judiciary

HF 1601 (Jaros) - appointed by Governor for ten-year term - referred to Governmental Operations

HF 1735 (Lipman) - appointed by Governor with advice and consent of Senate for six-year term - referred to Governmental Operations

SF 1831 (Neuville)/**HF 1731** (Lipman) - appointed by Governor for six-year term - referred to Elections/Governmental Operations

SF 2095 (Neuville) - appointed by Governor with advice and consent of Senate for eight-year term - referred to Judiciary

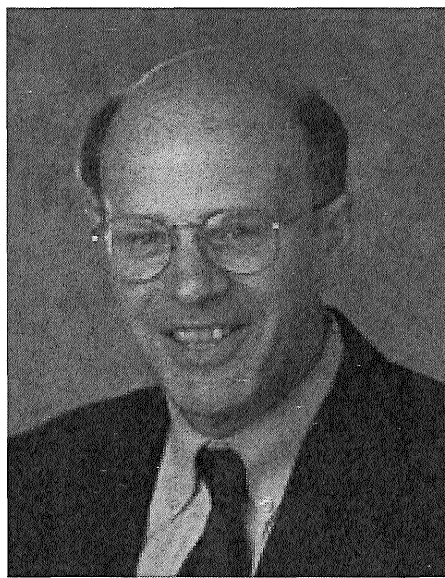
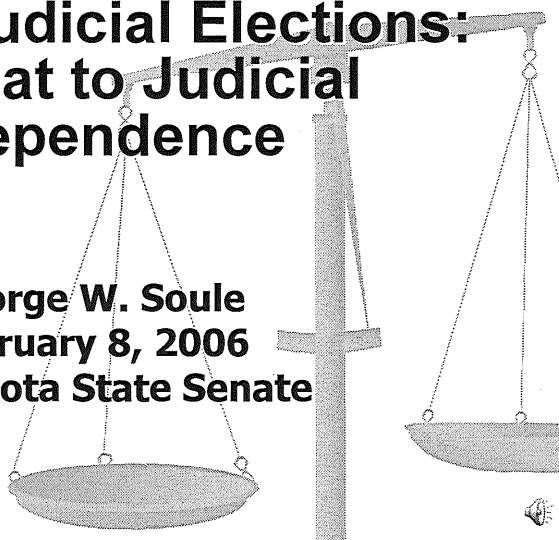
2005 No bills introduced

PSW:KP:cs

cc: Sandy Neren

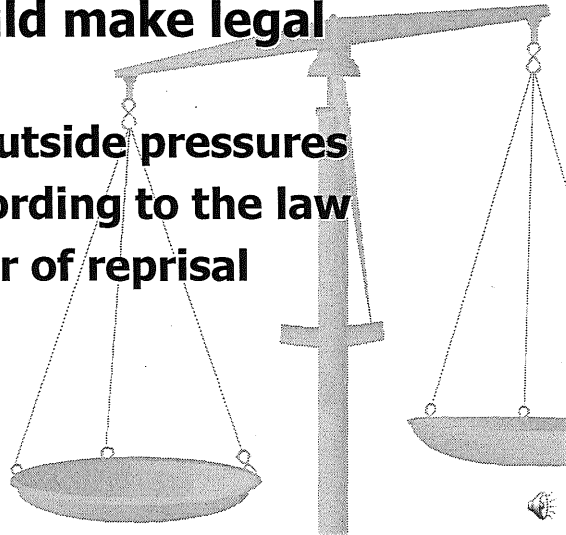
Partisan Judicial Elections: A Threat to Judicial Independence

**George W. Soule
February 8, 2006
Minnesota State Senate**



What Is Judicial Independence?

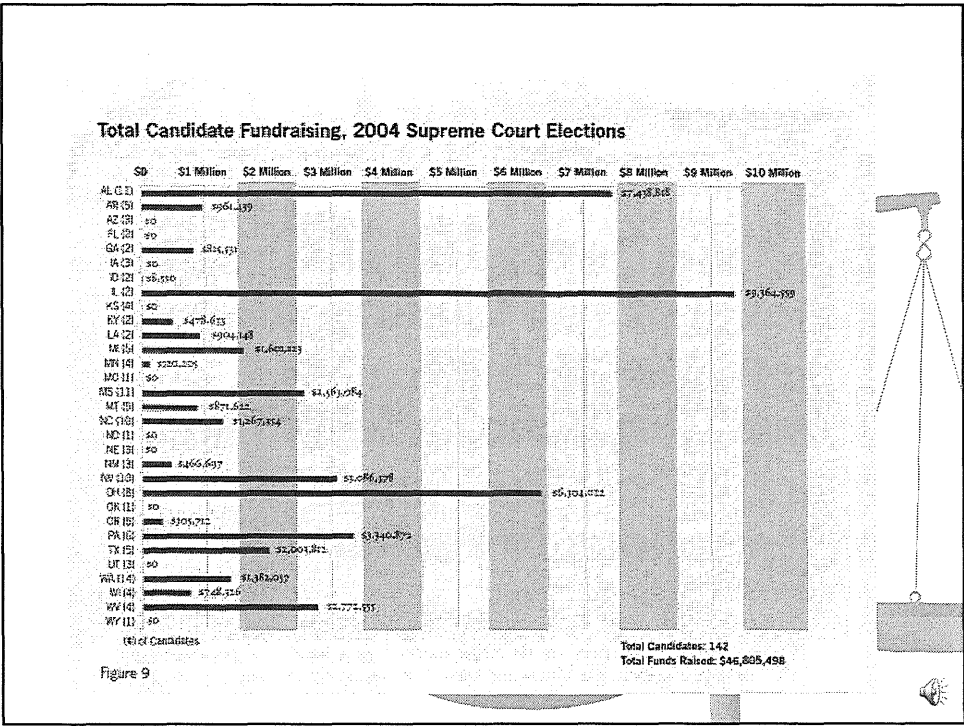
- **Judges should make legal decisions**
 - **Free from outside pressures**
 - **Strictly according to the law**
 - **Without fear of reprisal**



Partisan Judicial Elections

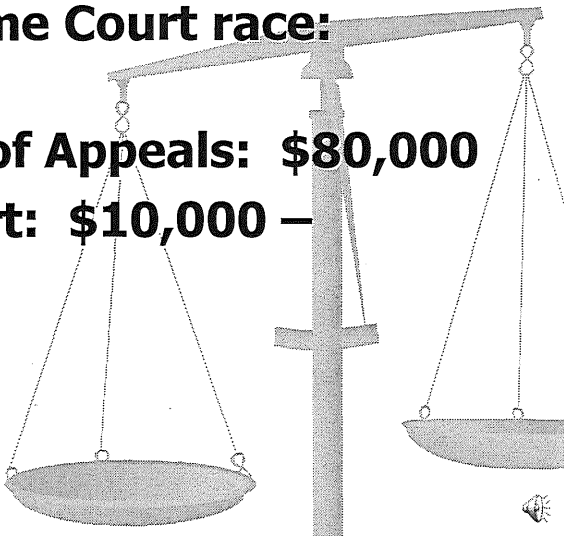
Alabama
Arkansas
Illinois
Louisiana
New York
North Carolina
Pennsylvania
Texas
West Virginia





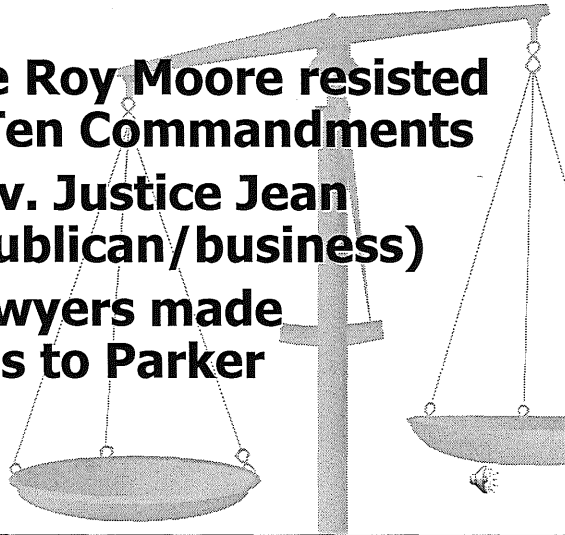
Minnesota Experience

- 2002 Supreme Court race: **\$91,000**
- 2004 Court of Appeals: **\$80,000**
- District Court: **\$10,000 – 125,000**

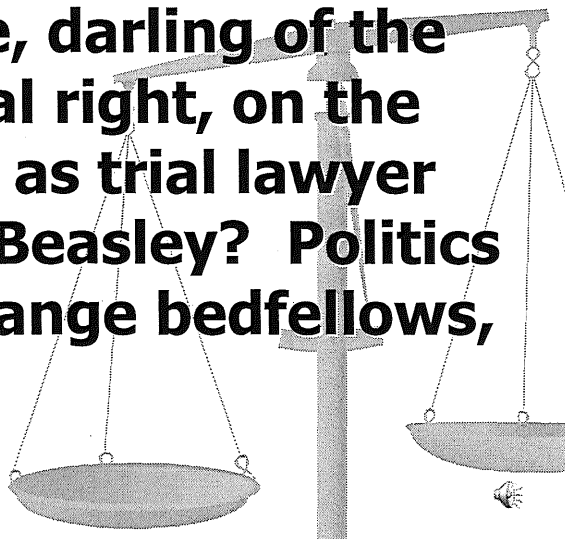


Alabama

- **Chief Justice Roy Moore resisted removal of Ten Commandments**
- **Tom Parker v. Justice Jean Brown (Republican/business)**
- **Plaintiffs' lawyers made contributions to Parker**



“Roy Moore, darling of the evangelical right, on the same side as trial lawyer king Jere Beasley? Politics makes strange bedfellows, indeed.”



LEGALIZED ABORTION
 (Announcer): First liberal judges banned school prayer, then they legalized abortion, today they're

destroying marriage and taking God out of our public life. It's created a moral crisis

and judges are on the front lines. That's why your vote for Tom Parker on Tuesday

Tom Parker

is so important. Tom Parker is a conservative

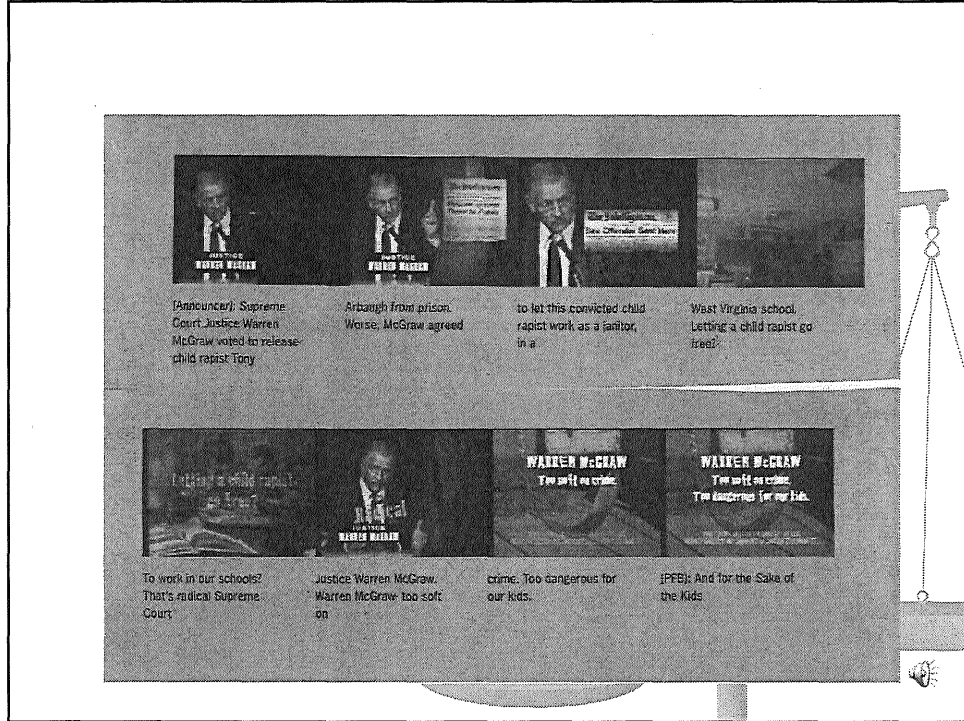
Christian and man of principle who served as a top aide to

Chief Justice Roy Moore. Parker is a pro-life leader, fighter for tax payers, and Parker strongly opposes gay marriage.

Tom Parker, Republican for Alabama Supreme Court, standing up for what we believe. (PFB: Tom Parker for Alabama Supreme Court)

West Virginia

- One executive donated \$2.4 million to start "And For the Sake of Kids"
- Targeted Justice Warren McGraw
- 80% of television ads were negative ads



Illinois

- **Circuit Judge Lloyd Karmeier (Republican) v. Appellate Judge Gordon Maag (Democrat)**
- **Illinois Civil Justice League v. Victims and Families United**
- **Nearly \$10 million spent**
- **Neutral groups to monitor election**

Announcer: Who is behind Supreme Court candidate Lloyd Karmeier?

Files of contributions to Lloyd Karmeier from big corporations and

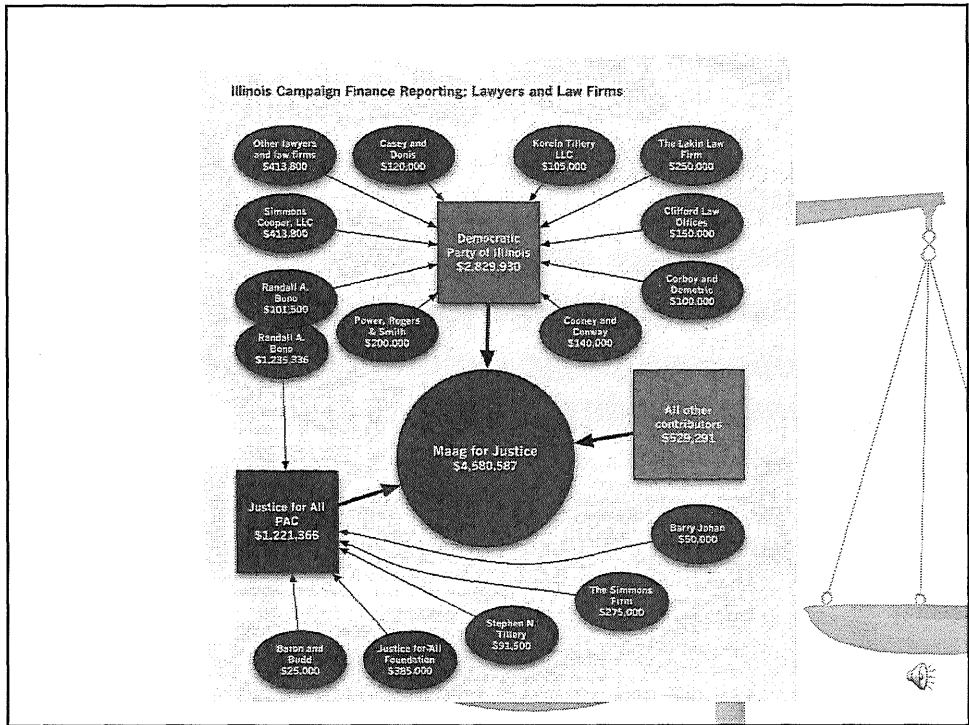
Washington DC lobbyists. Karmeier's tobacco backers were charged

with racketeering and found guilty of fraud in Illinois. He takes money from

the asbestos industry which is responsible for hundreds of thousands

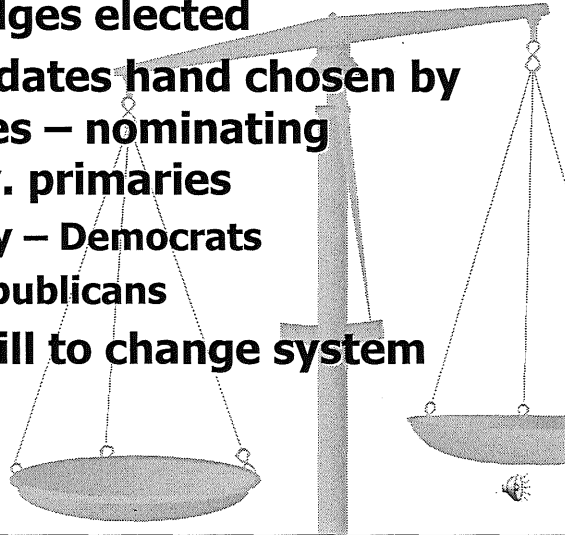
of deaths. Karmeier. How can he be on our side if the big corporate interests

are on his side? (PFB: Justice for All PAC)



New York

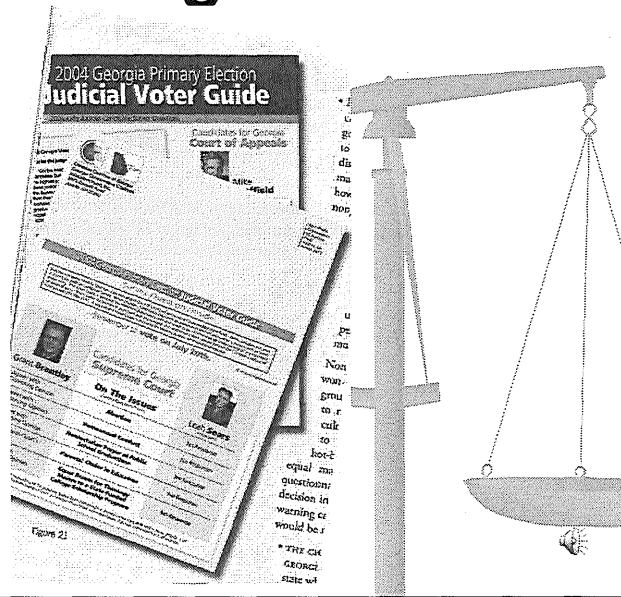
- Trial court judges elected
- Judicial candidates hand chosen by political bosses – nominating conventions v. primaries
 - New York City – Democrats
 - Upstate – Republicans
- No political will to change system



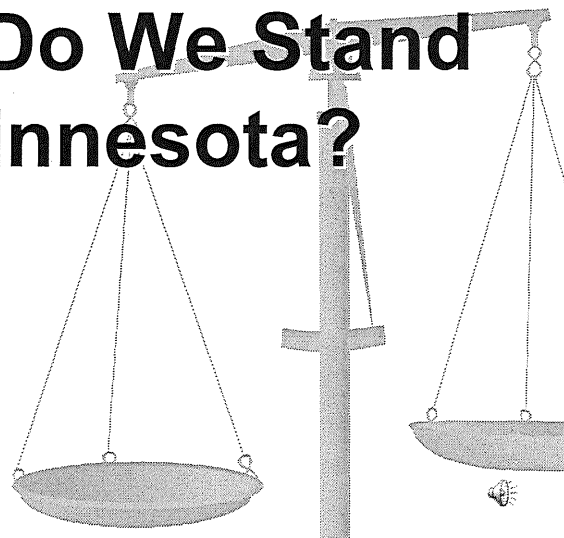
- Corruption
 - Bribed judge standing trial (\$115,000)
 - Indictments, grand jury investigations
 - Unopposed judge candidates raising money and directing to party consultants
 - Judges required to hire party law secretaries



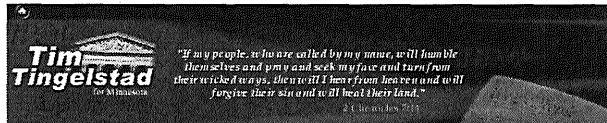
Georgia



Where Do We Stand in Minnesota?



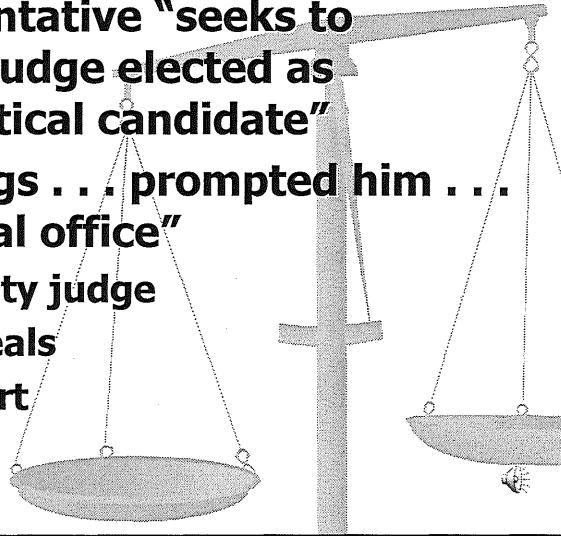
5. **Strike-Down of Anti-Sodomy Law.** Do you agree with the Hennepin County district court decision that held Minnesota's anti-sodomy law, which was in place prior to the ratification of Minnesota's Constitution, is unconstitutional as it applies to non-commercial, non-public, consensual acts of sodomy between adults? Yes _____ No _____
6. **Ban on Homosexual in Boy Scouts.** Do you agree with the U.S. Supreme Court decision in *Boy Scouts of America v. Dale* (2000) which held that a state's anti-discrimination law cannot force the Boy Scouts to hire homosexuals as troop leaders because of their constitutional right of association? Yes _____ No _____
7. **Partial Birth Abortion.** Do you agree with the U.S. Supreme Court decision in *Stenberg, Attorney General of Nebraska, et al. v. Carhart* (2000), which ruled unconstitutional the state of Nebraska's ban on the partial birth abortion procedure? Yes _____ No _____
8. **Rights of Business Owner.** Do you agree with the Minnesota Supreme Court decision *Lewis v. Couper*, (1986) which held that a private business owner does not have a constitutional right to express religious beliefs through non-coercive policies? Yes _____ No _____
9. **School Vouchers.** Do you agree with the U.S. Supreme Court decision *Zelman v. Simmons-Harris* (2002) which held that a state of Ohio voucher program in Cleveland is constitutional? Yes _____ No _____



- But this campaign was about much more than electing a man to the Supreme Court. **It was the first step toward carrying the Light of Truth back into our public institutions.** To regain the original place of blessing God intended for us, we must return to our Godly heritage. This will require our highest courts to again acknowledge the sovereignty of God over the affairs of this State and Nation.

Partisan Election Challenge in 1st District

- **State representative "seeks to become first judge elected as endorsed political candidate"**
- **"several rulings . . . prompted him . . . to seek judicial office"**
 - **Ramsey County judge**
 - **Court of Appeals**
 - **Supreme Court**



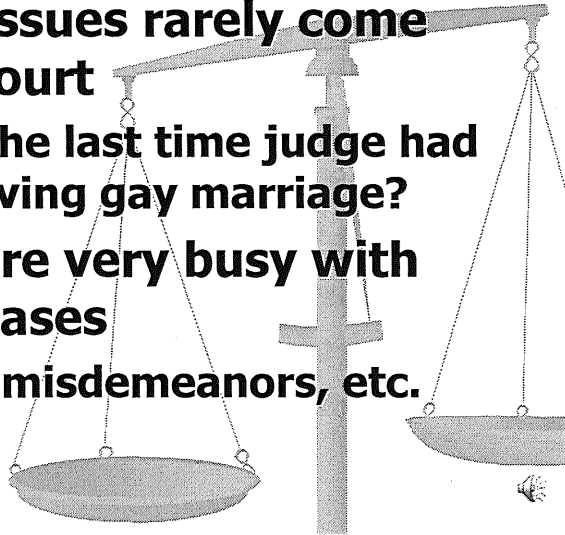
Campaigns on Hot Button Issues?

- **Interest groups have announced they will try to elect judges who support the groups' agendas**
- **One interest group has announced challenge to Supreme Court Justice**



Campaigns on Political Issues Are Deceptive to Voters

- **Hot button issues rarely come before the court**
 - **When was the last time judge had a case involving gay marriage?**
- **The courts are very busy with low profile cases**
 - **Family law, misdemeanors, etc.**



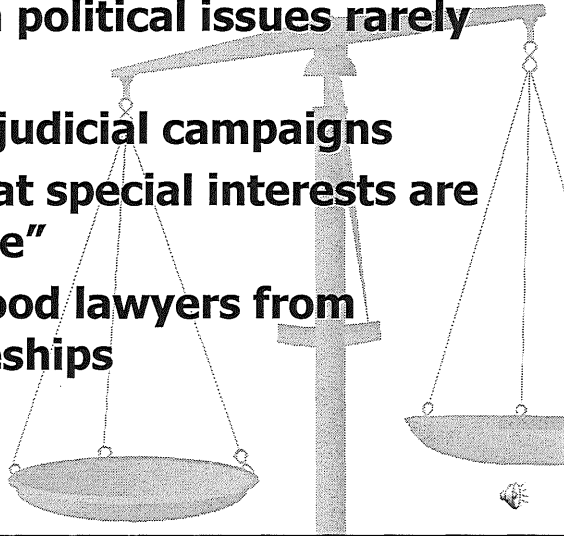
Too Much Talk: Recusal

- **Code: Judge is disqualified if he/she has made public statement that commits judge as to issue or controversy in proceeding**



Partisan Campaigns Will Diminish Confidence in Courts

- **Campaigns on political issues rarely before courts**
- **Big money in judicial campaigns**
- **Perception that special interests are buying "justice"**
- **Discourage good lawyers from seeking judgeships**



Thank you!



JUDICIAL SELECTION/ELECTION SYSTEMS
(as of January, 2004)

LIFETIME APPOINTMENTS

1. **Massachusetts**--Governor appoints with merit selection to age 70
2. **New Hampshire**--Governor appoints to age 70 without merit system, subject to approval of executive council
3. **Rhode Island**--Governor appoints with merit system for life

PARTISAN ELECTIONS

1. **Alabama**--all courts; merit selection for circuit courts for interim apptmts(6 yr.term)
2. **Illinois**--first election partisan, then retention election--all courts(10 yr. term for appellate cts., 6 yrs. trial ct)
3. **Indiana**--only for some circuit and superior courts(6 yr.term)
4. **Kansas**--half of district courts only(1 yr., then 6 for Sup.Ct., 4 yrs. for all other cts)
5. **Louisiana**--all courts(party affiliation on ballot, but open primaries, do not solicit party support) (10 yr. term appellate cts., 6 yrs. trial ct)
6. **Michigan**--campaign like partisan elections, nominated at party conventions; party affiliation not on general election ballot--all courts(8 yr. term Sup.Ct., 6 for all other cts)
7. **Missouri**--all circuit courts, except 4 counties(6 yr.term)
8. **New Mexico**--Merit apptmt, then partisan election, retention election for subsequent terms for all courts(1 yr., then 8 yr.ter m for appellate cts., 6 yrs. trial cts)
9. **New York**--Supreme Court/county court only;(Appeals court has legislative confirmation) (14 yr.term Sup.Ct., 10 yrs. trial ct)
10. **Pennsylvania**--Partisan election, then retention election--all courts(10 yr.term)
11. **Ohio**--Say they're nonpartisan, but are nominated in partisan primaries; general election has no party endorsement on ballot--all courts(6 yr. term)
12. **Tennessee**--trial court only(8 yr.term)
13. **Texas**--all courts(6 yr.term appellate cts., 4 trial ct)
14. **West Virginia**--all courts(12 yr.term Sup.Ct., 8 trial ct)

NONPARTISAN ELECTIONS

1. **Arkansas**--all courts(8 yr. term appellate cts., 6 yrs. trial ct)
2. **California**--trial court only(If uncontested, incumbent's name does not appear on the ballot)(12 yr. term for appellate cts., 6 yrs. trial ct) switched from partisan to nonpartisan elections in 1911
3. **Florida**--trial court(6 year term)
4. **Georgia**--all courts(6 yr term for appellate cts., 4 years for trial ct)
5. **Idaho**--all courts(6 year term for appellate cts., 4 yrs for trial ct)
6. **Indiana**--some trial courts
7. **Kentucky**--all courts(8 yr. term)
8. **Maryland**--trial court(Trial ct--1 yr., then 15 yr. term)
9. **Minnesota**--all courts(1 yr., then 6 yr. term)
10. **Mississippi**--all courts(8 yr. term for appellate cts., 4 for trial cts) switched from partisan to nonpartisan elections in 1994
11. **Montana**--all courts(Retention election if no opponent files!)(8 yr. term for Sup.Ct, 6

- yrs. for trial ct)
12. **Nevada**--all courts(6 yr. term)
 13. **North Carolina**--all courts(8 yr. term)
 14. **North Dakota**--all courts(10 yr. term for Sup.Ct, 6 for trial ct)
 15. **Oklahoma**--district court only(1 yr., then 6 yrs. for appellate cts, 4 yrs. trial ct)
 16. **Oregon**--all courts(6 yr. term)
 17. **South Dakota** --district court only(8 yr. term trial ct)
 18. **Washington**--all courts(6 yr. term appellate cts, 4 yrs. trial cts) first state to use nonpartisan elections in 1907
 19. **Wisconsin**--all courts(10 yr. term Sup.Ct., 6 yrs. all other cts)

LEGISLATIVE/COMMISSION REAPPOINTMENTS(NO ELECTIONS)

1. **Connecticut**--Merit selection to 8 year term; commission reviews performance on noncompetitive basis; Gov renominates and leg confirms(all courts)
2. **Delaware**-- Merit selection for 12 year term; Reapply and compete with others; Gov. reappts, Senate confirms(all courts)
3. **District of Columbia**--Apptd by Pres; confirmed by Senate for 10 year term; reaptd by commission if "well qualified"; if "qualified", Pres has option to reappoint
4. **Hawaii**--Merit selection for all courts; reaptd by commission to 10 year term(Chief Justice appoints district and family court judges)
5. **Maine**--Governor appoints without merit to 7 year term; reaptd by gov, subject to legislative confirmation(all courts)
6. **New Jersey**--Gov appoints without merit, reaptd by Gov after 7 years to age 70 with advise and consent of Senate(all courts)
7. **New York**--COURT OF APPEALS ONLY--incumbent reapplies to nominating commission and competes with others for nomination by Gov; Senate confirms;(Supreme, circuit court partisan)
 8. **South Carolina**--Merit commission recommends 3 candidates to General Assembly; majority vote to appoint; Reappointed by legislature-- NO GOVERNOR ROLE(all courts) (Terms---10 years Sup.Ct, 6 years all other cts)
9. **Vermont**--Merit selection, retained by vote of General Assembly every 6 years(all courts)
10. **Virginia**--Legislature selects and reappoints all judges-NO GOV. ROLE(all courts) (Terms--12 yrs.Sup.Ct., 8 all other cts)

RETENTION ELECTIONS

1. **Alaska**--Merit selection, then retention election-- all courts; judicial evaluation(10 yr. term Sup.Ct., 8 yrs all other cts) adopted 1959
2. **Arizona**--merit selection most courts; then retention most courts; judicial evaluation(2 yr term, then 6 yrs. appellate cts, 4 yrs.trial ct) adopted 1974
3. **California**--governor appts without merit; retention for appeals/supreme only; trial court nonpartisan(12 yr.term appellate cts., 6 yrs. trial court)
4. **Colorado**--Merit for all courts; retention elections for all courts(2 yr.term, then 10 yrs. Sup.Ct., 8 yrs.appeals ct., 6 trial ct) adopted 1966
5. **Florida**--Merit for Supreme and Court of Appeals, then retention(circuit court nonpartisan election)(6 yr. term) adopted 1973
6. **Illinois**--Retention election follows partisan election for all courts(10 yr. term appellate cts., 6 yrs. trial ct)

7. **Indiana**--Supreme, Appeals merit selection, then retention, same in some local courts; adopted 1970
8. **Iowa**--Merit selection, then retention election--all courts(8 yr term Sup.Ct., 6 yrs all other cts) adopted 1962
9. **Kansas**--Merit for Supreme/Appeals/ half district courts; retention elections(6 yr. term Sup.Ct., 4 yrs. all other cts) adopted 1948
10. **Maryland**--Merit selection for all, retention for Supreme/Appeals(10 yr. term) (Nonpartisan for trial courts--15 yr.term)
11. **Missouri**--Merit selection for Supreme/Appeals, 4 circuit court counties, followed by retention(12 yr. terms); (partisan election in all other trial courts--6 yr. terms) adopted 1940
12. **Montana**--Retention for all judges, all courts IF no opponent files--nonpartisan election if opponent files(8 yr.term Sup.Ct., 6 yrs. trial ct)
13. **Nebraska**--Merit for all courts, then retention election all courts(3 yrs., then 6 yr. terms after that) adopted 1962
14. **New Mexico**--Merit for all, then partisan election, then retention election for all future elections(8 yrs.appellate cts., 6 yrs.trial cts) adopted 1988
15. **Oklahoma**--Supreme/Appeals merit, then retention--6 yr. terms(district ct. nonpartisan--4 yr. terms) adopted 1961
16. **Pennsylvania**--Partisan for all courts, then retention all courts(10 yr. terms)
17. **So. Dakota**--Supreme merit, then retention(3 yrs., then 8 yr. terms); Circuit ct. nonpartisan election--8 yr. term; adopted 1980
18. **Tennessee**--Supreme/Appeals merit, then retention; district partisan(8 yr. terms) adopted 1971
19. **Utah**--Merit for all courts, then retention elections all courts(3 yrs., then 10 yrs Sup.Ct., 6 yrs. all other cts) adopted 1984
20. **Wyoming**--Merit for all courts, then retention election all courts(1 yr., then 8 for Sup.Ct., 6 yrs. trial ct) adopted 1972

Summary: Retention elections, all courts: Alaska , Colorado, Iowa, Nebraska, Utah, Wyoming

Retention elections, appellate courts, some trial cts: California, Florida, Arizona, Indiana, Kansas, Maryland, Missouri, Oklahoma, So. Dakota, Tennessee

Retention election follows partisan election: Illinois, Pa., New Mexico

Retention election only if no opponent: Montana

Judicial Selection in the States
Appellate and General Jurisdiction Courts



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Founded in 1913, the American Judicature Society is an independent, nonprofit organization supported by a national membership of judges, lawyers, and other members of the public. Through research, educational programs, and publications, AJS addresses concerns related to ethics in the courts, judicial selection, the jury, court administration, judicial independence, and public understanding of the justice system.



Judicial Selection in the States

Appellate and General Jurisdiction Courts

“Summary of Initial Selection Methods”

Merit Selection through Nominating Commission*	Gubernatorial (G) or Legislative (L) Appointment without Nominating Commission	Partisan Election	Nonpartisan Election	Combined Merit Selection and Other Methods**
Alaska	California (G)	Alabama	Arkansas	Arizona
Colorado	Maine (G)	Illinois	Georgia	Florida
Connecticut	New Jersey (G)	Louisiana	Idaho	Indiana
Delaware	New Hampshire (G)	Michigan**	Kentucky	Kansas
District of Columbia	Virginia (L)	Ohio**	Minnesota	Missouri
Hawaii	South Carolina (L)**	Pennsylvania	Mississippi	New York
Iowa		Texas	Montana	Oklahoma
Maryland		West Virginia	Nevada	South Dakota
Massachusetts			North Carolina**	Tennessee
Nebraska			North Dakota	
New Hampshire			Oregon	
New Mexico			Washington	
Rhode Island			Wisconsin	
Utah				
Vermont				
Wyoming				

*The following nine states use merit plans only to fill midterm vacancies on some or all levels of court: Alabama, Georgia, Idaho, Kentucky, Minnesota, Montana, Nevada, North Dakota, and Wisconsin.

**See attached chart for details.



Judicial Selection in the States

Appellate and General Jurisdiction Courts

“Initial Selection: Trial Courts of General Jurisdiction”

Merit Selection (16)	Partisan Election (9)	NonPartisan Election (17)	Gubernatorial (3) Legislative (2) Appointment	Combined Methods (4) ¹
Alaska	Alabama	Arkansas	Maine (G)	Arizona
Colorado	Illinois	California	New Hampshire (G)	Indiana
Connecticut	Louisiana	Florida	New Jersey (G)	Kansas
Delaware ²	New York	Georgia	South Carolina (L)	Missouri
District of Columbia	Ohio ³	Idaho	Virginia (L)	
Hawaii ⁴	Pennsylvania	Kentucky		
Iowa	Tennessee	Michigan		
Maryland ²	Texas	Minnesota		
Massachusetts ²	West Virginia	Mississippi		
Nebraska		Montana		
Nevada		North Carolina		
New Mexico		North Dakota		
Rhode Island		Oklahoma		
Utah		Oregon		
Vermont		South Dakota		
Wyoming		Washington		
		Wisconsin		

1. In these states, some judges are chosen through merit selection and some are chosen in competitive elections. See attached chart for details.

2. Merit selection is established by executive order.

3. Candidates appear on the general election ballot without party affiliation but are nominated in partisan primaries.

4. The chief justice makes appointments to the district court and family court.



Judicial Selection in the States

Appellate and General Jurisdiction Courts

“Initial Selection: Intermediate Appellate Courts”

Merit Selection (18)	Partisan Election (6)	NonPartisan Election (11)	Gubernatorial Appointment (2)	Legislative Appointment (2)
Alaska	Alabama	Arkansas	California	South Carolina
Arizona	Illinois	Georgia	New Jersey	Virginia
Colorado	Louisiana	Idaho		
Connecticut	Ohio ¹	Kentucky		
Florida	Pennsylvania	Michigan		
Hawaii	Texas	Minnesota		
Indiana		Mississippi		
Iowa		North Carolina		
Kansas		Oregon		
Maryland ²		Washington		
Massachusetts ²		Wisconsin		
Missouri				
Nebraska				
New Mexico				
New York ²				
Oklahoma				
Tennessee				
Utah				

1. Candidates appear on the general election ballot without party affiliation but are nominated in partisan primary elections.
 2. Merit selection is established by executive order.



Judicial Selection in the States

Appellate and General Jurisdiction Courts

“Initial Selection: Courts of Last Resort”

Merit Selection (24)	Partisan Election (8)	NonPartisan Election (13)	Gubernatorial Appointment (4)	Legislative Appointment (2)
Alaska	Alabama	Arkansas	California	South Carolina
Arizona	Illinois	Georgia	Maine	Virginia
Colorado	Louisiana	Idaho	New Hampshire	
Connecticut	Michigan ¹	Kentucky	New Jersey	
Delaware ²	Ohio ³	Minnesota		
District of Columbia	Pennsylvania	Mississippi		
Florida	Texas	Montana		
Hawaii	West Virginia	Nevada		
Indiana		North Carolina		
Iowa		North Dakota		
Kansas		Oregon		
Maryland ²		Washington		
Massachusetts ²		Wisconsin		
Missouri				
Nebraska				
New Mexico				
New York				
Oklahoma				
Rhode Island				
South Dakota				
Tennessee				
Utah				
Vermont				
Wyoming				

1. Candidates appear on the general election ballot without party affiliation but are nominated at political party conventions.

2. Merit selection is established by executive order.

3. Candidates appear on the general election ballot without party affiliation but are nominated in partisan primary elections.



Judicial Selection in the States

Appellate and General Jurisdiction Courts

“Initial Selection, Retention, and Term Length”

State and Court	APPOINTIVE SYSTEMS		ELECTIVE SYSTEMS		INITIAL TERM OF OFFICE (YEARS)	METHOD OF RETENTION
	Merit Selection through Nominating Commission	Gubernatorial (G) or Legislative (L) Appointment without Nominating Commission	Non-Partisan Election	Partisan Election		
Alabama						
Supreme Court			X		6	Re-election (6 year term)
Court of Civil App.			X		6	Re-election (6 year term)
Court of Criminal App.			X		6	Re-election (6 year term)
Circuit Court			X		6	Re-election (6 year term)
ALASKA						
Supreme Court	X				3	Retention election (10 year term) ¹
Court of Appeals	X				3	Retention election (8 year term)
Superior Court	X				3	Retention election (6 year term)
ARIZONA						
Supreme Court	X				2	Retention election (6 year term)
Court of Appeals	X				2	Retention election (6 year term)
Superior Court (county pop. greater than 250,000)	X				2	Retention election (4 year term)
Superior Court (county pop. less than 250,000)			X		4	Re-election (4 year term)
ARKANSAS²						
Supreme Court			X		8	Re-election for additional terms
Court of Appeals			X		8	Re-election for additional terms
Circuit Court			X		6	Re-election for additional terms
CALIFORNIA						
Supreme Court		X(G)			12	Retention election (12 year term)
Courts of Appeal		X(G)			12	Retention election (12 year term)
Superior Court ³			X		6	Nonpartisan election (6 year term) ⁴

1. In a retention election judges run unopposed on the basis of their record.

2. In November 2000, Arkansas voters passed an amendment to the Arkansas constitution shifting judicial elections to a nonpartisan system.

3. The California constitution provides that local electors may choose gubernatorial appointments instead of nonpartisan election to select superior court judges. To date, no counties have chosen gubernatorial appointments.

4. If the election is uncontested, the incumbent's name does not appear on the ballot.

State and Court	APPOINTIVE SYSTEMS		ELECTIVE SYSTEMS		INITIAL TERM OF OFFICE (YEARS)	METHOD OF RETENTION
	Merit Selection through Nominating Commission	Gubernatorial (G) or Legislative (L) Appointment without Nominating Commission	Non-Partisan Election	Partisan Election		
COLORADO						
Supreme Court	X				2	Retention election (10 year term)
Court of Appeals	X				2	Retention election (8 year term)
District Court	X				2	Retention election (6 year term)
CONNECTICUT						
Supreme Court	X				8	Commission reviews incumbent's performance on noncompetitive basis; governor renominates and legislature confirms
Appellate Court	X				8	Same
Superior Court	X				8	Same
DELAWARE⁵						
Supreme Court	X				12	See Footnote 6
Court of Chancery	X				12	See Footnote 6
Superior Court	X				12	See Footnote 6
DISTRICT OF COLUMBIA						
Court of Appeals	X				15	Reappointment by judicial tenure commission ⁷
Superior Court	X				15	Reappointment by judicial tenure commission ⁷
FLORIDA						
Supreme Court	X				1	Retention election (6 year term)
District Court of Appeal	X				1	Retention election (6 year term)
Circuit Court			X		6	Re-election for additional terms
GEORGIA						
Supreme Court			X		6	Re-election for additional terms
Court of Appeals			X		6	Re-election for additional terms
Superior Court			X		4	Re-election for additional terms
HAWAII						
Supreme Court	X				10	Reappointed to subsequent term by the Judicial Selection Commission (10 year term)
Intermediate Court of Appeals	X				10	Reappointed to subsequent term by the Judicial Selection Commission (10 year term)
Circuit Court and Family Court	X				10	Reappointed to subsequent term by the Judicial Selection Commission (10 year term)

5. Merit selection established by executive order in Delaware, Maryland, and Massachusetts. In all other jurisdictions merit selection established by constitutional or statutory provision.

6. Incumbent reapplies to nominating commission and competes with other applicants for nomination by the governor. The governor may reappoint the incumbent or another nominee. The senate confirms the appointment.

7. Initial appointment is made by the President of the United States and confirmed by the Senate. Six months prior to the expiration of the term of office, the judge's performance is reviewed by the tenure commission. Those found "Well Qualified" are automatically reappointed. If a judge is found to be "Qualified" the President may nominate the judge for an additional term (subject to Senate confirmation). If the President does not wish to reappoint the judge, the District of Columbia Nomination Commission compiles a new list of candidates.

State and Court	APPOINTIVE SYSTEMS		ELECTIVE SYSTEMS		INITIAL TERM OF OFFICE (YEARS)	METHOD OF RETENTION
	Merit Selection through Nominating Commission	Gubernatorial (G) or Legislative (L) Appointment without Nominating Commission	Non-Partisan Election	Partisan Election		
IDAHO						
Supreme Court			X		6	Re-election for additional terms
Court of Appeals			X		6	Re-election for additional terms
District Court			X		4	Re-election for additional terms
ILLINOIS						
Supreme Court				X	10	Retention election (10 year term)
Appellate Court				X	10	Retention election (10 year term)
Circuit Court				X	6	Retention election (6 year term)
INDIANA						
Supreme Court	X				2	Retention election (10 year term)
Court of Appeals	X				2	Retention election (10 year term)
Circuit Court				X	6	Re-election for additional terms
Circuit Court (Vanderburgh County)			X		6	Re-election for additional terms
Superior Court				X	6	Re-election for additional terms
Superior Court (Allen County)			X		6	Re-election for additional terms
Superior Court (Lake County)	X ⁸				2	Retention election (6 year term)
Superior Court (St. Joseph County)	X				2	Retention election (6 year term)
Superior Court (Vanderburgh County)			X		6	Re-election for additional terms
IOWA						
Supreme Court	X				1	Retention election (8 year term)
Court of Appeals	X				1	Retention election (6 year term)
District Court	X				1	Retention election (6 year term)
KANSAS						
Supreme Court	X				1	Retention election (6 year term)
Court of Appeals	X				1	Retention election (4 year term)
District Court (seventeen districts)	X				1	Retention election (4 year term)
District Court (fourteen districts)				X	4	Re-election for additional terms
KENTUCKY						
Supreme Court			X		8	Re-election for additional terms
Court of Appeals			X		8	Re-election for additional terms
Circuit Court			X		8	Re-election for additional terms
LOUISIANA						
Supreme Court				X ⁹	10	Re-election for additional terms
Court of Appeals				X ⁹	10	Re-election for additional terms
District Court				X ⁹	6	Re-election for additional terms

8. Three of the judges run in partisan elections for 6 year terms then have to be re-elected for additional terms.

9. Louisiana judicial elections are partisan inasmuch as the candidates' party affiliations appear on the ballot. However, two factors lead a somewhat nonpartisan character to these elections: (1) primaries are open to all candidates; and (2) judicial candidates generally do not solicit party support for their campaigns.

State and Court	APPOINTIVE SYSTEMS		ELECTIVE SYSTEMS		INITIAL TERM OF OFFICE (YEARS)	METHOD OF RETENTION
	Merit Selection through Nominating Commission	Gubernatorial (G) or Legislative (L) Appointment without Nominating Commission	Non-Partisan Election	Partisan Election		
MAINE						
Supreme Judicial Court		X(G)			7	Reappointment by governor, subject to legislative confirmation
Superior Court		X(G)			7	Reappointment by governor, subject to legislative confirmation
MARYLAND¹⁰						
Court of Appeals	X				See fn 11	Retention election (10 year term)
Court of Special Appeals	X				See fn 11	Retention election (10 year term)
Circuit Court	X				See fn 11	Nonpartisan election (15 year term) ¹²
MASSACHUSETTS¹³						
Supreme Judicial Court	X				to age 70	
Appeals Court	X				to age 70	
Trial Court of Mass.	X				to age 70	
MICHIGAN						
Supreme Court				X ¹⁴	8	Re-election for additional terms
Court of Appeals			X		6	Re-election for additional terms
Circuit Court			X		6	Re-election for additional terms
MINNESOTA						
Supreme Court			X		6	Re-election for additional terms
Court of Appeals			X		6	Re-election for additional terms
District Court			X		6	Re-election for additional terms
MISSISSIPPI						
Supreme Court			X		8	Re-election for additional terms
Court of Appeals			X		8	Re-election for additional terms
Chancery Court			X		4	Re-election for additional terms
Circuit Court			X		4	Re-election for additional terms
MISSOURI						
Supreme Court	X				1	Retention election (12 year term)
Court of Appeals	X				1	Retention election (12 year term)
Circuit Court				X	6	Re-election for additional terms
Circuit Court (Jackson, Clay, Platte, Saint Louis Counties)	X				1	Retention election (6 year term)
MONTANA						
Supreme Court			X		8	Re-election; unopposed judges run for retention
District Court			X		6	Re-election; unopposed judges run for retention
NEBRASKA						
Supreme Court	X				3	Retention election (6 year term)
Court of Appeals	X				3	Retention election (6 year term)
District Court	X				3	Retention election (6 year term)

10. Merit selection established by executive order in Delaware, Maryland, and Massachusetts. In all other jurisdictions merit selection established by constitutional or statutory provision.

11. Until the first general election following the expiration of one year from the date of the occurrence of the vacancy.

12. May be challenged by other candidates.

13. Merit selection established by executive order in Delaware, Maryland, and Massachusetts. In all other jurisdictions merit selection established by constitutional or statutory provision.

14. Although party affiliations for Supreme Court candidates are not listed on the general election ballot, candidates are nominated at party conventions.

State and Court	APPOINTIVE SYSTEMS		ELECTIVE SYSTEMS		INITIAL TERM OF OFFICE (YEARS)	METHOD OF RETENTION
	Merit Selection through Nominating Commission	Gubernatorial (G) or Legislative (L) Appointment without Nominating Commission	Non-Partisan Election	Partisan Election		
NEVADA						
Supreme Court			X		6	Re-election for additional terms
District Court			X		6	Re-election for additional terms
NEW HAMPSHIRE¹⁵						
Supreme Court		X(G) ¹⁶			to age 70	
Superior Court		X(G) ¹⁶			to age 70	
NEW JERSEY						
Supreme Court		X(G)			7	Reappointment by governor (to age 70) with advice and consent of the Senate
Appellate Division of Superior Court		X(G)			7	Reappointment by governor (to age 70) with advice and consent of the Senate
Superior Court		X(G)			7	Reappointment by governor (to age 70) with advice and consent of the Senate
NEW MEXICO						
Supreme Court	X				until next general election	See Footnote 17
Court of Appeals	X				until next general election	See Footnote 17
District Court	X				until next general election	See Footnote 17
NEW YORK						
Court of Appeals	X				14	See Footnote 18
Appellate Division of the Supreme Court	X				5	Commission reviews and recommends for or against reappointment by governor
Supreme Court				X	14	Re-election for additional terms
County Court				X	10	Re-election for additional terms
NORTH CAROLINA						
Supreme Court			X ¹⁹		8	Re-election for additional terms
Court of Appeals			X ¹⁹		8	Re-election for additional terms
Superior Court			X		8	Re-election for additional terms
NORTH DAKOTA						
Supreme Court			X		10	Re-election for additional terms
District Court			X		6	Re-election for additional terms

15. Merit selection established by executive order in Delaware, Maryland, and Massachusetts. In all other jurisdictions merit selection established by constitutional or statutory provision.

16. The governor's nomination is subject to the approval of a five-member executive council.

17. Partisan election at next general election after appointment for eight-year term for appellate judges, six-year term for district. The winner thereafter runs in a retention election for subsequent terms.

18. Incumbent reapplies to nominating commission and competes with other applicants for nomination to the governor. The governor may reappoint the incumbent or another nominee. The senate confirms the appointment.

19. Beginning in 2004, these elections will be nonpartisan.

State and Court	APPOINTIVE SYSTEMS		ELECTIVE SYSTEMS		INITIAL TERM OF OFFICE (YEARS)	METHOD OF RETENTION
	Merit Selection through Nominating Commission	Gubernatorial (G) or Legislative (L) Appointment without Nominating Commission	Non-Partisan Election	Partisan Election		
OHIO						
Supreme Court				X ²⁰	6	Re-election for additional terms
Court of Appeals				X ²⁰	6	Re-election for additional terms
Court of Common Pleas				X ²⁰	6	Re-election for additional terms
OKLAHOMA						
Supreme Court	X				1	Retention election (6 year term)
Court of Criminal Appeals	X				1	Retention election (6 year term)
Court of Appeals	X				1	Retention election (6 year term)
District Court			X		4	Re-election for additional terms
OREGON						
Supreme Court			X		6	Re-election for additional terms
Court of Appeals			X		6	Re-election for additional terms
Circuit Court			X		6	Re-election for additional terms
Tax Court			X		6	Re-election for additional terms
PENNSYLVANIA						
Supreme Court				X	10	Retention election (10 year term)
Superior Court				X	10	Retention election (10 year term)
Commonwealth Court				X	10	Retention election (10 year term)
Court of Common Pleas				X	10	Retention election (10 year term)
RHODE ISLAND						
Supreme Court	X				Life	
Superior Court	X				Life	
Worker's Compensation Court	X				Life	
SOUTH CAROLINA						
Supreme Court		X (L) ²¹			10	Reappointment by legislature
Court of Appeals		X (L) ²¹			6	Reappointment by legislature
Circuit Court		X (L) ²¹			6	Reappointment by legislature
SOUTH DAKOTA						
Supreme Court	X				3	Retention election (8 year term)
Circuit Court			X		8	Re-election for additional terms

20. Although party affiliations for judicial candidates are not listed on the general election ballot, candidates are nominated in partisan primary elections.

21. South Carolina has a 10 member Judicial Merit Selection Commission that screens judicial candidates and reports the findings to the state's General Assembly. Since 1997, the Assembly is restricted to voting only on those candidates found qualified by the Judicial Merit Selection Commission. However, the nominating commission itself is not far removed from the ultimate appointing body, and cannot be considered to be nonpartisan as control over member nominations is vested in majority party leadership. Although most nominating commissions contain members appointed by the governor or legislature, no other commissions actually contain the governor or current legislators who have final approval over the candidate as voting members of the commission. In contrast, the Judicial Merit Selection Commission in South Carolina contains 6 current members of the General Assembly appointed by the Speaker of the House of Representatives, the Chairman of the Senate Judiciary Committee, and the President Pro Tempore of the Senate. State legislators also choose the remaining 4 members of the Commission who are selected from the general public.

State and Court	APPOINTIVE SYSTEMS		ELECTIVE SYSTEMS		INITIAL TERM OF OFFICE (YEARS)	METHOD OF RETENTION
	Merit Selection through Nominating Commission	Gubernatorial (G) or Legislative (L) Appointment without Nominating Commission	Non-Partisan Election	Partisan Election		
TENNESSEE						
Supreme Court	X				until next biennial general election	Retention election (8 year term)
Court of Appeals	X				until next biennial general election	Retention election (8 year term)
Court of Criminal Appeals	X				until next biennial general election	Retention election (8 year term)
Chancery Court				X	8	Re-election for additional terms
Criminal Court				X	8	Re-election for additional terms
Circuit Court				X	8	Re-election for additional terms
TEXAS						
Supreme Court				X	6	Re-election for additional terms
Court of Criminal Appeals				X	6	Re-election for additional terms
Court of Appeals				X	6	Re-election for additional terms
District Court				X	4	Re-election for additional terms
UTAH						
Supreme Court	X				First general election	Retention election (10 year term)
Court of Appeals	X					Retention election (6 year term)
District Court	X					Retention election (6 year term)
Juvenile Court	X				3 years after appointment	Retention election (6 year term)
VERMONT						
Supreme Court	X				6	Retained by vote of General Assembly (6 year term)
Superior Court	X				6	Retained by vote of General Assembly (6 year term)
District Court	X				6	Retained by vote of General Assembly (6 year term)
VIRGINIA						
Supreme Court		X(L)			12	Reappointment by legislature
Court of Appeals		X(L)			8	Reappointment by legislature
Circuit Court		X(L)			8	Reappointment by legislature
WASHINGTON						
Supreme Court			X		6	Re-election for additional terms
Court of Appeals			X		6	Re-election for additional terms
Superior Court			X		4	Re-election for additional terms
WEST VIRGINIA						
Supreme Court				X	12	Re-election for additional terms
Circuit Court				X	8	Re-election for additional terms

State and Court	APPOINTIVE SYSTEMS		ELECTIVE SYSTEMS		INITIAL TERM OF OFFICE (YEARS)	METHOD OF RETENTION
	Merit Selection through Nominating Commission	Gubernatorial (G) or Legislative (L) Appointment without Nominating Commission	Non-Partisan Election	Partisan Election		
WISCONSIN						
Supreme Court			X		10	Re-election for additional terms
Court of Appeals			X		6	Re-election for additional terms
Circuit Court			X		6	Re-election for additional terms
WYOMING						
Supreme Court	X				1	Retention election (8 year term)
District Court	X				1	Retention election (6 year term)

THE AMERICAN JUDICATURE SOCIETY'S ELMO B. HUNTER CITIZENS CENTER FOR JUDICIAL SELECTION

The Hunter Center for Judicial Selection was founded in 1991 to further the American Judicature Society's historic interest in judicial selection issues. Today the Center is a nationally recognized research center that conducts, synthesizes, and disseminates empirical research on a wide range of judicial selection issues. Acting as a clearinghouse of information on judicial selection for state court administrators, lawmakers, the media, the legal and academic communities, and court reform organizations, the Center serves its core audiences in a number of ways:

- Undertaking groundbreaking research on such topics as demographic diversity in the merit selection process, the increasing influence of interest groups and political action committees in judicial elections, and the phenomenon of midterm appointments in states that utilize competitive elections for judicial office.
- Working with other court-related organizations to increase public awareness of, and involvement with, state justice issues through forums and public discussions. The Center sponsored the first national forum on judicial selection in Washington, D.C., in March 2000.
- Monitoring and providing assistance to grassroots judicial reform efforts in the states. Center staff worked closely with reform groups in Florida in the fall of 2000 to promote a ballot initiative for merit selection of trial court judges.
- Educating international visitors on methods of judicial selection in the United States and their respective implications for judicial independence and accountability. Recently, the Center has hosted judges and policy makers from China and Nigeria.
- Organizing meetings and conferences for AJS members on judicial selection topics of current interests, such as the 2001 annual meeting on AJS' role in reforming judicial campaigns.

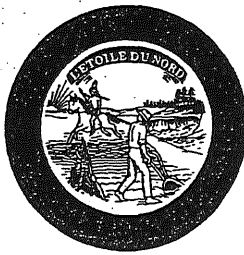
The publications and resources available through the Hunter Center include the following:

- ***Judicial Selection in the States*** provides basic information on the initial selection and subsequent retention of judges on state appellate courts and trial courts of general jurisdiction.
- ***Judicial Merit Selection: Current Status*** is a detailed description of merit selection provisions in states that utilize "merit selection" of judges, or appointment through nominating commissions, at some level of court.
- ***Research on Judicial Selection*** is an annual, peer-reviewed journal that provides a forum for scholarly research and debate on a wide range of judicial selection issues.
- ***The Continuing Effort to Create Nonpartisan Judiciaries in the State Courts*** details efforts to promote merit selection in Illinois, describes obstacles that have impeded these efforts, and serves as a guide for judicial selection reform in other states.
- ***Judicial selection in the United States: a special report*** depicts the historical evolution of judicial selection in the United States.
- ***Judicial Selection in The United States: A Compendium of Provisions*** is a compilation of state statutory and constitutional provisions relating to judicial selection.
- ***Model Judicial Selection Provisions*** incorporates existing constitutional and statutory provisions, executive orders, earlier efforts to develop selection plans, and recent experiences of judicial nominating commissions across the country.
- ***Ensuring Judicial Excellence*** is a video that describes the benefits of judicial merit selection through interviews with voters, judges, attorneys, and judicial nominating commissioners.
- ***Merit Selection: Current Status, Procedures, and Issues*** reviews the history of merit selection, describes the structural and procedural characteristics of current plans, and examines empirical studies of the impact of merit selection. It also discusses current issues affecting merit selection, such as the Americans with Disabilities Act, Voting Rights Act, and judicial performance evaluations.
- ***Two monographs, The Law and Ethics of Judicial Election Campaigns and A Handbook of Judicial Election Reforms*** survey the problems with, and proposed solutions for, judicial elections.
- ***Handbook for Judicial Nominating Commissioners*** teaches procedures for various nominating commission tasks, from conducting an organizational meeting, to recruiting, investigating, and interviewing applicants for judgeships, to voting for the best qualified candidates and submitting their names to the appointing authority.

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Minnesota House of Representatives

September 8, 2005

TO: Representative Steve Simon
Representative Melissa Hortman
Senator Geoff Michel

FROM: Deborah K. McKnight, Legislative Analyst (651-296-5056)

RE: Judicial Election Background Materials

This memo provides materials for considering a legislative response to *Republican Party of Minnesota v. White*: a summary of the two major court decisions, recent bills on judicial elections, recent amendments to the judicial canons, and a summary of the statutes on judicial elections. Let me know if you have questions about the memo or think of other issues you want help with.

Republican Party of Minnesota v. White

This outlines the litigation history and summarizes the holdings and rationale in the recent Eighth Circuit *en banc* decision and the earlier Supreme Court decision. As you know, there were several decisions in this case. If you want information about those not mentioned here, let me know.

Litigation history: In 1996 and 1998 Greg Wersal ran for the Minnesota Supreme Court. In 1996 he criticized past decisions of the state supreme court. He also attended and spoke at Republican Party gatherings and identified himself as a party member. During his 1998 campaign he filed suit in federal court for declaratory and injunctive relief against Canon 5 of the Minnesota Code of Judicial Conduct. Wersal claimed that Canon 5 violated the free speech and association guarantees of the First Amendment and the Equal Protection clause of the Fourteenth Amendment in that it prohibited him from (1) announcing his views on disputed political and legal issues, (2) personally soliciting campaign funds, and (3) identifying his membership in a political party, seeking partisan endorsement, and attending or speaking to partisan political gatherings.

The district court held that the fund solicitation and partisan activity clauses were narrowly tailored to serve a compelling state interest in an independent and impartial judiciary, did not

offend equal protection, and were not impermissibly vague. It held that the announce clause must be construed narrowly to apply only to issues likely to come before the court in order to survive attack, and it so construed the clause. *Republican Party of Minnesota v. Kelly*, 63 F. Supp.2d 967 (1999).

The Eighth Circuit affirmed. *Republican Party of Minnesota v. Kelly*, 247 F.3d 854 (CA8 2001).

The plaintiffs sought review by the United States Supreme Court on the announce clause issue (decision summarized below).

On remand from the Supreme Court a panel of the Eighth Circuit invalidated the announce clause, consistent with the ruling and analysis of the Supreme Court decision. The panel remanded the partisan activities clause to the district court for findings on whether it could be upheld in light of the Supreme Court's ruling on the announce clause. It upheld the solicitation clause. *Republican Party of Minnesota v. White*, 361 F.3d 1035 (CA8 2004).

Plaintiffs then sought *en banc* review by the Eighth Circuit (decision described below).

Supreme Court decision: *Republican Party of Minnesota v. White*, 536 U.S. 765, 122 S.Ct. 2528 (2002). The only issue the Supreme Court addressed was whether the Minnesota judicial canon that prohibited a candidate from announcing positions on disputed legal or political issues violated the First Amendment. The Court held that it did and reversed and remanded the first Eighth Circuit decision on this issue.

In my view there are two major points in the majority's analysis of why the announce clause fails the strict scrutiny test. In part, the majority sees judges as policy makers whose positions on issues are relevant to the electorate's decisions about them. The contrary view, expressed by some of the dissenters, is that judges should remain open to decide cases without preconceived values. Another important aspect of the majority rationale is that states need not have elected judges (some use gubernatorial or legislative appointment systems), but if they do, they must allow candidates freedom of speech in the election process.

The Court reasoned that the announce clause prohibits speech on the basis of content and burdens speech about a candidate's qualifications. For these reasons, the Court applied the strict scrutiny test, which gave the state the burden of proving (1) the announce clause is narrowly tailored and (2) the clause serves a compelling state interest.

The state argued that the announce clause protects a compelling interest in judicial impartiality. The Court indicated doubts that any judicial candidate lacks predispositions on major issues that might come before a court. In any case, the Court concluded the announce clause was under-inclusive in promoting impartiality because it only addressed positions taken during a campaign; a judge was free to have prejudices and express them after actually gaining office. The Court rejected the notion that a judge might feel more bound to stick with positions he or she took during a campaign. The Court noted that the right to speak on disputed issues is the essence of the First Amendment and the restrictions in the announce clause stand that constitutional right on its head. Speech restrictions were adopted by the states during the last few decades of the

twentieth century, which the Court felt was too short a period to qualify them as established traditions in our system of government.

Eighth Circuit en banc decision: *Republican Party v. White* 416 F.3d 738 (CA8 en banc)(August 2, 2005). The decision by a divided court reflects the view that the rationale of the Supreme Court's decision required striking down the partisan activities and fund solicitation bans, as well as the announce clause.

On remand from the Supreme Court a panel of the Eighth Circuit struck down the announce clause as per the Court's opinion. When the panel upheld the ban on fund solicitation and remanded the partisan activities restrictions to the district court, the plaintiffs asked for an *en banc* hearing. The Eighth Circuit vacated the panel decision and ruled for the plaintiffs on all issues.

In striking down the announce clause the court followed the reasoning and result in the Supreme Court decision. On the partisan activities restriction, the court concluded that under the Supreme Court's reasoning, this provision also must fall. The announce clause restricted a candidate's ability to directly express positions. The partisan activities restriction prevented indirect expression in the form of associating with a political party. Further, the court found that like the announce clause, the partisan activities clause is under-inclusive in that it only applies during election season. Also, the bar is under-inclusive because it does not apply to issue advocacy groups, but only political parties. The court dismissed any possible concern that a judge with partisan ties would be biased toward parties to litigation on cases where the political party is a litigant. The court said such a judge could just recuse himself or herself.

Moving to the solicitation clause, the court struck it down after very brief analysis. The court found that asking for campaign contributions is a key part of seeking office and a protected First Amendment activity. It did not question the validity of the portion of the canon that prevents a judicial candidate from knowing who did or did not contribute and stated that this structure would protect the impartiality of judges. (The dissent noted that judicial candidates could check the Campaign Finance Board records and quickly lose their impartiality by seeing who did and did not contribute). Because under the canon the candidate would not learn the identities of contributors, the court found that prohibiting the candidate from signing fund solicitation letters was not at all tailored to protect a compelling state interest in judicial impartiality.

Minnesota Responses to *Republican Party v. White*

Bills: Some legislators responded to the litigation during the years it was pending by discussing bills to implement judicial retention elections ("the Missouri plan"). A news report in the summer of 2000 quoted Representative Abrams as intending to offer a retention bill in the 2001 session. There is no indication that he introduced such a bill that year. However, now former Representative Dawkins did introduce H.F. 930/S.F.1689 (now former Senator Doug Johnson), which included judicial retention elections and a variety of other proposals.

In the 2004 session now former Representative Lipman introduced bills to provide for gubernatorial appointment of judges (H.F. 1731/S.F. 1831Neuville) and gubernatorial appointment with Senate approval (H.F. 1735/no companion).

None of the bills described here were acted on by any committee. No bills to change the manner of selecting judges were introduced in 2005.

Judicial Canon Amendments

Following the United States Supreme Court decision, the Minnesota Supreme Court appointed an advisory committee to review the state code of judicial conduct and the rules of the Board on Judicial Standards. The committee reported to the court in 2004. The court issued an order adopting some of the committee's recommendations. *In re Amendment of the Code of Judicial Conduct* (slip opinion Minn. September 14, 2004).

Announce clause: The canon changes include modifying the announce clause so that it applies only while a proceeding is "pending or impending in any court." Canon 3A(8). A new clause was added to prohibit judges from making pledges or promises regarding issues likely to come before the court that are inconsistent with impartiality. Canon 3A(9). A clause was added to require recusal from a case if a judge had made any statement that commits the judge with regard to an issue or the controversy in the proceeding. Canon 3D(e). Finally, a definition of "impartiality" was added that covers absence of bias for or against parties or classes of parties, and an open mind on issues. Canon 3F, Canon 5E.

Partisan activities: The court refused to adopt the recommended rule changes to Canon 5 on partisan activity. In its order, the court refused to change rules "based on the possibility that they may be vulnerable to constitutional attack." Slip opinion 2-3. The court made these points:

- the state and federal systems seek to create a judiciary "*as free from political, economic, and social pressure as possible so judges can decide cases without those influences* (emphasis in original)." Slip opinion 3
- records of the state constitutional debates recognize there is a difference between elections for judicial and other offices. *Id.*
- since early in the twentieth century Minnesota has had nonpartisan elections. *Id.*
- independence of the judicial branch of government depends on judges being free from political party control. Slip opinion 4

In light of the Eight Circuit's *en banc* decision, the partisan activities clause presumably must be revisited.

Minnesota Statutes on Judicial Elections

As you know, by statute judicial offices in this state have been nonpartisan since a 1912 act of the legislature. Special session 1912, chapter 2 §182. At the primary, judicial candidates appear on the "State and County Nonpartisan Primary Ballot. Minn. Stat. 2004, § 204D.08, subd. 6. At the general election, the statutes provide for judges to be placed on the "County and Judicial Nonpartisan General Election Ballot" or, if more room is needed, on the "Judicial Nonpartisan General Election Ballot." Minn. Stat. 2004 § 204D.11, subs. 3, 5, and 6.

In the area of campaign finance, you are aware that judicial candidates do not receive a direct public subsidy and may not participate in the political contribution refund program. However,

judicial candidates are candidates for purposes of Minn. Stat. chapter 10A, which means they must create a principal campaign committee and file reports like legislative and constitutional office candidates.

Judicial candidates are not subject to contribution limits. It would be constitutional to impose contribution limits on these candidates without providing a public subsidy. You recall that the stick of spending limits must be combined with the carrot of public subsidy to satisfy the First Amendment under *Buckley v. Valeo*. However, the Supreme Court recognized the dangers of the reality and appearance of corruption from large contributions. Under *Buckley*, political contributions may be limited without providing a subsidy to candidates.

DKM/jb



LEAGUE OF
WOMEN VOTERS®
MINNESOTA

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LWVMN Statement to Minnesota State Senate Judiciary Committee at an informational hearing on judicial elections, February 8, 2006.

My name is Janet Gendler and I'm here today as a representative of the League of Women Voters of Minnesota. The League is a multi-issue, grassroots volunteer organization of concerned women and men working together to better understand and influence the issues that affect us, our families and our future. We are a political, but non-partisan, organization dedicated to researching complex questions from all viewpoints. The League does not support or oppose any political party or candidate.

In 1997, LWVMN began a study of judicial elections in Minnesota. Our study culminated in a report, "Choosing Minnesota's Judges: An Examination of the Present System and Alternative Proposals," in 1999. The overwhelming consensus of our members was that we oppose the politicization of the judiciary. Our current position supports the election of judges which, thanks to various court decisions, is now wide open for politicization. We could support contribution limits to judicial campaigns. There are none at present.

LWVMN supports the concept of maintaining a fair and impartial judiciary. We believe that when making district and appellate judicial appointments, the Governor should be required to choose from a list forwarded by the Commission on Judicial Selection. We support leaving the incumbency designation on the ballot.

LWVMN continues to work in collaboration to maintain an independent judiciary in Minnesota. Representatives of the League have served on bar association and Supreme Court study committees. We are part of a coalition working on the judicial Fair and Clean Elections (FACE) bill. We plan to work on public funding for judicial campaigns.

Many of you are familiar with the League through its voter service projects. We have cosponsored successful candidate forums for district court contests. We produced a Voter's Guide to judicial elections.

We will continue efforts to inform the public about the judiciary. One example is our Law Day forum this year. LWVMN is joining with our members in St. Paul to offer a public forum on the separation of powers, with emphasis on the judiciary. This will be held on Law Day, May 1 at William Mitchell School of Law. We intend to offer a Voters Guide to Judicial Elections to provide nonpartisan information on judicial candidates. This guide will be on our website.

We understand the importance of judges maintaining their impartiality before they walk into the courtroom. We want to be part of the group that looks at the issues. We want to be part of the solution, before there is a problem.