



Minnesota's Judiciary

*Keeping It
Fair and Impartial*

Judicial Election Reform



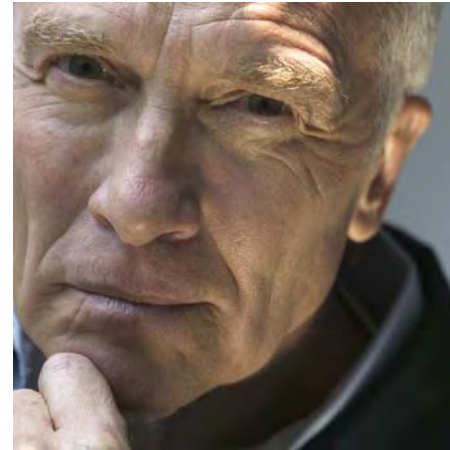
Minnesota Lakes - some of our best assets



Minnesota's
fair and
impartial
judiciary is
another of
our state's
best assets.



Preserving it helps all of us.





The Judiciary's Role

- Protects individual rights
- Serves as guardian of the Constitution and the law
- Keeps the doors of justice open to all people



Minnesota judges are among the hardest working in the country, handling an average of 49% more cases each than do judges in states with comparable court systems.



2008 US Chamber of Commerce Survey of Corporate Counsel:

Minnesota judges rank:

- No. 2 nationally for competence.
- No. 5 nationally for impartiality.



Minnesota's Judiciary is held accountable by:

- Appeals
- Board on Judicial Standards
- Judicial Council oversight
- Limited terms
- Removal on individual cases



Minnesota's Judiciary

- The quality of justice in Minnesota depends on the quality of its judges.
- The quality of Minnesota's judges depends on the system by which they are selected.



How has Minnesota traditionally selected its judges?

- Most judges come through non-partisan Merit Selection Commission
- Merit Commission evaluates integrity, judicial temperament, experience, legal knowledge, etc.
- Forwards names to the Governor
- Governor selects from that list



How has Minnesota traditionally selected its judges?

- Judges stand for election every 6 years
- Until recently, judges could not:
 - Raise campaign funds directly
 - Seek political party endorsement
 - State views on topics that might come before them in court



For nearly 100 years
Minnesota has elected its
judges on a non-partisan
ballot.



In the words of
a popular songwriter,
"The Times They Are a-Changin'"



Recent Federal Court Cases

Recent decisions by the U.S. Supreme Court and the 8th Circuit Court of Appeals, which were based on freedom of speech arguments, are changing judicial elections in Minnesota and across the country.



With the new standards set forth under these decisions, judges and their challengers, may:

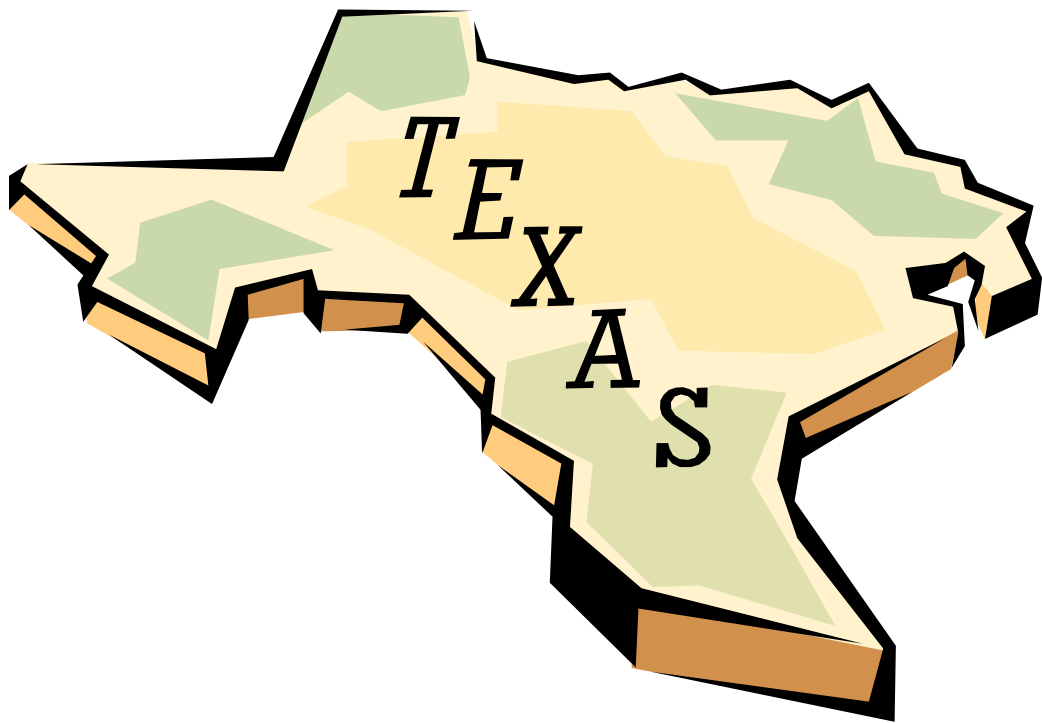
- Seek endorsements from political parties.
- Announce positions on social and political issues.
- Personally solicit campaign contributions.
- Attend political gatherings.



So, what's wrong with partisan
judicial elections???

A LOT!

To see Minnesota's future, we only need look to the states that ALREADY have partisan judicial elections...





- In 2004, an Illinois Supreme Court race raised a record \$9.3 M
- Winning candidate described the amount as “obscene” and asked, “How can people have faith in the system?”
- Legal opponent of judge’s contributors: “We knew we lost the case when we lost the election.”



- Some judges expect certain level of contribution from law firms.
- Campaign checks are handed to judges during court proceedings.
- Half of Texas judges surveyed say contributions influence their decisions.

When asked what one thing they would change about the Texas court system, judges most often mentioned judicial selection. Attorneys named partisan election of judges as the court system's most significant weakness.



2008 US Chamber of Commerce Survey of Corporate Counsel

(some categories, including judicial impartiality)



⇒ **Bottom 10 in the country**



⇒ **Bottom 5 in the country**



West Virginia

- In 2004, an energy company CEO spent \$3 million to help elect a state supreme court justice.
- In 2007, that justice joined a 3-2 majority overturning a \$50 million verdict against the energy company.
- In 2009, the U.S. Supreme Court ruled that the justice's failure to recuse himself from the case violated the litigants' constitutional right to due process.



What do Minnesotans think?

- **2006 Minnesota survey:** 81% give Minnesota judges a positive rating

but...

- **2008 Minnesota survey:** 77% are worried about judicial candidates having to raise campaign funds, run TV ads, and seek political party and special interest support



State Supreme Court Races

- **2007 in Wisconsin:** \$6.2 Million, much of which was spent by special interest groups through independent ads and mailings
- **Nov. 2007 in Pennsylvania:** \$5.4 Million on Supreme Court elections
- **2008 in Michigan:** two candidates and special interest groups spent \$7.5 million
- **In 2008,** Supreme Court candidates in 13 states raised \$29.4 million



2008 Justice at Stake Report on Judicial Elections:

- Judges and justices routinely raise millions of dollars from contributors whose cases they decide.
- Campaign ads are designed to destroy confidence in the integrity of the candidates.
- Special interests are working to convert judicial elections into a “tool of political intimidation.”

[T]hese recent trends are turning the ‘Great Lakes’ states into leading battlefields in the growing national struggle for the courts.”

**-- Justice at Stake, 2008 Report
*The New Politics of Judicial Elections in the Great Lakes States, 2000-2008***



Just Across the River:

- **A “racially charged” 2008 reelection campaign in Wisconsin between Louis Butler, the state’s first black Supreme Court Justice, and lower court Judge Mike Gabelman**
- **Ad sponsored by the Gabelman campaign falsely suggested Butler had freed a rapist**
- **Left out of the ad: Butler had been a public defender representing the accused, lost, and the man did not commit his next crime until paroled**
- **Over \$3 million spent on TV ads during the campaign, mostly by outside interest groups**
- **Justice Butler lost the race**


-Source: Annenberg Political Fact Check

(http://www.factcheck.org/judicial-campaigns/judgment_day_in_wisconsin.html)



Warning Signs in Minnesota:

- Because of federal court decisions and rules changes, Minnesota's judicial elections could become like partisan elections
- Of the six states with the most expensive judicial elections, three are Midwestern states—Illinois, Ohio, and Michigan



“The judiciary simply cannot be impartial or trusted when party politics encourages judges to behave as traditional politicians. . . [O]ur role is distinctly different. Whereas executive and legislative officials commit themselves to enacting their political agendas, a judge’s role is to interpret the law fairly and ensure due process to every litigant.”

Hon. Alan Page
Assoc. Justice MN
Supreme Court



RECOGNIZE . . .

- Good judges must set aside their influences – often must rule against what they believe.
- Demanding to know in advance how a judge will rule asks him/her to ignore their oath to be fair
- A strong judiciary is accountable to the Constitution and the law, not politicians or the majority (or we would lose individual rights)



Why Should I Care?

Nearly everyone has contact with Minnesota's court system at some point in their lives:

- Traffic Ticket
- Business Dispute
- Divorce
- Child in Juvenile Court
- Child Custody or Support
- Dispute with Employer or Employee
- Real Estate
- Adoptions
- Small Claims Court



The most important question is . . .
When **YOUR** case comes to trial,
what kind of judge do you want?

*Do you want a judge deciding your case
based on . . .*

- Who has contributed to the judge's campaign?
- Or, on the facts and the law?



**So, what's the
solution?**



“If Minnesota wants to ensure a state judiciary untainted by money-glutted, free-for-all partisan elections, the state must alter the way judges are chosen.”

Pioneer Press 1/25/06



Quie Commission

- Citizens Commission for the Preservation of an Impartial Judiciary—32 members
- Chaired by former Governor Al Quie
 - Took public input
 - Held hearings across the state
 - Heard experts, both from Minnesota and outside the state
 - Issued Recommendations in March 2007



Quie Commission Recommendations

- Mandatory appointment by the Governor of all judges – including appellate judges – from a slate of candidates nominated by a merit selection commission
- Comprehensive performance evaluation of all sitting judges so that the public has information about the performance of its judges
- Renewal of judicial terms through retention elections, where citizens have the right to vote to retain all judges
- Performance evaluation results (qualified/not qualified) are printed on the ballot so that the public can cast informed votes

These recommendations would require a constitutional amendment



Minnesota State Bar Association Recommendations

- Supports a system of judicial selection and retention that is as free from political influence as possible.
- Supports retention elections, with the results of performance evaluation indicated on the ballot (qualified/not qualified). This provides voters with more information than is currently available on the ballot for judicial candidates.



Coalition for Impartial Justice

Supports Senate File 70/House File 224

Participating Organizations include:

- Citizens League
- Hennepin County Bar Association
- Insurance Federation of Minnesota
- Joint Religious Legislative Coalition
- League of Women Voters Minnesota
- Minnesota AFL-CIO
- Minnesota Chamber of Commerce
- Minnesota Council of Nonprofits
- Minnesota State Bar Association
- Minnesotans for Impartial Courts



What Can You Do?

- Ask your legislators to support retention elections for judges - SF 70/HF 224
- Tell them you want to see judicial election reform on the ballot in November 2010
- Talk to your colleagues and neighbors about the importance of preserving the asset we have in Minnesota's judiciary
- Ask judicial candidates to focus on impartiality, fairness, experience and integrity



Minnesota's Judiciary

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Judicial Election Reform*

Thank you!

*A Public Education Project
Coalition for Impartial Justice and
Minnesota State Bar Association's Judiciary Committee*
For more information, contact Nancy Mischel at nmischel@mnbar.org
or see:
<http://www.mnbar.org/impartialjustice>