

DELIBERATING IN A DEMOCRACY:

MINNESOTA ISSUES

1 **Do you think that Minnesotans should amend the Minnesota Constitution so that**
2 **judges face retention elections rather than campaign against a specific judicial**
3 **candidate?**

INTRODUCTION

4 Under Minnesota's Constitution, Minnesota state court judges are elected to six year
5 terms. When a judge retires during his or her term, the Governor appoints a
6 replacement who then runs for office at the first election that occurs at least one year
7 after the appointment.

8 Historically, Minnesota's judicial elections have been unlike elections for legislators and
9 the governor. The lawyers running for election to become a judge have run as
10 nonpartisan candidates, which means they have not sought the endorsement of political
11 parties. In addition, they have not engaged in the level of political advertising used by
12 other types of candidates and they have not explained their positions on issues that
13 might come before them. Many believe these practices keep judicial elections impartial
14 and are critical to preserving Minnesota's independent judiciary.

15 Recently, decisions from the United State Supreme Court and the 8th Circuit Court of
16 Appeals have changed this. Now, judges are free to express opinions, fundraise to
17 support their campaigns with minimal restrictions, and seek political party
18 endorsement. Fear that these changes threaten judicial impartiality has resulted in a
19 proposed constitutional amendment to change the way Minnesota judges are elected.

20 The bills that have been under consideration by the Minnesota House of
21 Representatives and the Minnesota Senate (HF 224 and SF 70) propose a constitutional
22 amendment that would ask voters if they would like to change the way Minnesota's
23 judges are selected. Initially, all judicial candidates would first go before a Merit
24 Selection Committee that would evaluate each candidate's qualifications based on
25 nonpartisan factors such as integrity, ability, judicial temperament, experience, and
26 legal knowledge. The Committee would then recommend three to five candidates to
27 the Governor who would pick from that list. At election time, voters would be asked
28 whether a current judge should be retained rather than choosing between two or more
29 judicial candidates or seeing an unopposed judicial candidate on the ballot — something
30 that occurs in 90% of all judicial elections. If the majority of voters vote not to retain a
31 particular judge, he/she would step down, and the governor would appoint a
32 replacement.

33 **Do you think that Minnesotans should amend the Minnesota Constitution so that**
34 **judges face retention elections rather than campaign against a specific judicial**
35 **candidate?**

36 **POSITION SUMMARIES**

37 **Yes:** Expensive and uncivil judicial elections, fueled by interest group contributions,
38 increased partisanship, and judicial candidates stating their positions on controversial
39 issues currently plague elections in the Midwest. It is only a matter of time before
40 Minnesota faces this trend which, if not checked could permanently undermine the
41 fairness and impartiality of the judiciary.

42 **No:** Judicial elections enable the public to better “reign in” the judiciary by providing a
43 significant measure of self-government to voters. The people serve as a check on the
44 Executive’s power to appoint as well.

Information Sources:

<http://wdoc.house.leg.state.mn.us/leg/LS86/HF3829.0.pdf> Bill proposing constitutional amendment. (see page 2, line 2.5)

<http://www.minnpost.com/community-voices/2010/03/11/16567/let-minnesota-voters-decide-how-judicial-selection-election-is-done>

<http://www.minnpost.com/community-voices/2010/03/08/16472/judicial-elections-whats-wrong-with-letting-the-people-choose>

http://www.fed-soc.org/publications/pubid.90/pub_detail.asp

http://www.fed-soc.org/publications/pubid.90/pub_detail.asp

http://news.minnesota.publicradio.org/features/200205/13_stawickie_wersalworld/index.shtml

YES

Contested elections lead to appearance or reality of judges being beholden to interest groups, lawyers, political parties, campaign donors; this reduces confidence in the justice system.

The U.S. Supreme Court's White and Citizens United decisions will lead to changes in Minnesota's culture of impartiality. People point to negative campaigns in Wisconsin and other states and fear that it is just a matter of time before this happens here.

30-second sound bites are often designed to inflame rather than assist voters in making an informed choice.

If the governor chooses from the Merit Selection Committee's recommendations to make initial judicial appointments, there is greater control of candidate qualifications. Under the current system, any lawyer can file to run, even poorly qualified lawyers.

Retention process makes judges accountable to entire community. Only about 10% of sitting Minnesota state court judges ever have a challenger at election time, so the retention system actually serves to make all judges more accountable to voters.

Judges are different than policy makers; they should be above politics and the influence of interest groups. Judges are not elected to represent the views of the people who vote for them.

Courts typically spend little time considering the controversial issues that dominate other political campaigns and it is not desirable to focus judicial elections on these issues.

NO

Minnesota currently elects judges and the system has worked well, why change it?

Control of judiciary is placed in the hands of a few when a small commission recommends lawyers for judicial appointments and subsequent elections don't permit lawyers to run against them.

Nominating commissions are influenced by the politics of interest groups such as the bar, and the transparency is not there.

The governor's office becomes too powerful under the retention system. Even if the people reject the governor's appointment, the governor gets to appoint the successor.

Elections that are based on judge's record and performance, rather than a live candidate, will not generate enough publicity for the public to cast an informed vote. Judicial elections with retention elections have even lower voter turnout.

Voters are more informed when they are exposed to campaign speech, and endorsements help voters know who agrees with their positions.

Judges make policy even if they claim they don't. It would be better to have them be forthright about it.

When voters are not comparing two candidates, it is hard to determine if the sitting judge is a "good" person for the job.

Appointments followed by retention elections trust that the governor will be committed to appointing impartial judges and not party loyalists and person friends.