

Perspectives

Partisan elections would threaten judicial independence

by George Soule

The conduct of judicial campaigns has been the subject of study and debate in Minnesota since the controversial 1996 elections. A few partisans contend that citizens would be better served by adding more politics to our judicial elections system. Their proposals would inflict serious damage to the independence and impartiality of our judiciary.

At issue are rules in Canon 5 of the Code of Judicial Conduct that prohibit candidates from seeking and using political party endorsements, from declaring positions on political and legal issues, and from personally soliciting campaign contributions. Critics would repeal these restrictions, allowing judicial candidates to run campaigns like all partisan politicians.

Making judicial elections into partisan contests would undermine the strength of our judiciary in many ways:

- Judges endorsed by political parties would not be impartial, but would have an agenda based on party politics. They would enter office precommitted to positions on issues that may come before them. Incumbents running for re-election, and hoping for party endorsement, would be partial to party officials and platforms.
- Qualifications, experience and an open mind would be replaced by years of party service or good name identification as criteria for selecting judges.
- Partisan elections would foster

more challenges to sitting judges. Historically in Minnesota, many judges have not faced serious election challenge. Generally, judges have won re-election unless they have been publicly sanctioned for improper conduct or have received bad publicity.

In a partisan system, political parties may run a slate of judicial candidates, turning every judicial election into a contested race. Judges would spend more time running for re-election, diverting their attention from their real work at the courthouse. Campaigns would also be more expensive, creating pressure on judges to be more involved in fundraising.

- A partisan election system would also contribute to instability in the judiciary. In "landslide" election years, judges endorsed by the losing party could be swept from office, regardless of their qualifications or performance.

- All of these factors would discourage qualified candidates from applying for judicial vacancies between elections. The process of seeking party endorsement, or running against party-endorsed candidates, may daunt potential applicants who have never been

involved in politics. Other qualified candidates may be deterred by the prospect of constantly running for election.

Allowing judicial candidates to declare positions on legal and political issues may turn elections into referenda on "hot button" issues such as abortion and gun control. Those issues rarely surface in day-to-day court proceedings, but they may divert attention from far more relevant and important questions in judicial campaigns.

Voters in judicial elections should focus on issues of qualifications, experience, temperament, court administration and judicial philosophy. Current rules permit debate on a variety of issues important in assessing a judge's performance or a challenger's credentials. These are the types of questions now asked by the Commission on Judicial Selection of applicants for appointment.

Current rules also require judicial candidates to delegate tasks of fundraising and recruiting public support. These restrictions wisely put some distance between a judge and litigants and lawyers. If judges could personally solicit campaign contributions,

every court proceeding could be a fundraising opportunity. At minimum, direct solicitations would create the classic "appearance of impropriety" — lawyers aiding judges before whom the lawyers regularly appear.

The system is not perfect. Studies have shown that voters lack sufficient information to make informed choices between judicial candidates. Improvements can and should be made. Candidates, lawyers, the bar and the media must do a better job in educating voters on important issues in judicial campaigns. The Minnesota State Bar Association has embarked on a modest program to get more relevant information to voters.

Minnesota has a strong tradition of nonpartisan judicial elections. The Legislature created the Minnesota Commission on Judicial Selection in 1990 to reduce politics in judicial appointments. Adding more politics to judicial elections would be a step backward in building an independent and impartial judiciary. 

George Soule, of Bowman and Brooke LLP, Minneapolis, is counsel for the Minnesota State Bar Association in Republican Party of Minnesota, et al. v. Kelly, et al., the lawsuit challenging Canon 5 restrictions. He is chair of the MSBA Judicial Elections Implementation Committee and a vice-chair of the Minnesota Commission on Judicial Selection.

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