Commentary

A forum for opinions, reactions, dialogue and disagreement

Judicial endorsements by political parties

PRO

Current system denies voters a basis to choose

By Greg Wersal

I recently spoke to a group of college students in their political science class. I asked what they'd do to organize a campaign for a candidate for a statewide office.

They fired back — raise money, identify the issues that separate their candidate from opponents, seek the endorsement of a political party and have the candidate speak to as many groups of citizens as possible. I then introduced them to the surreal world of judicial elections.

I explained that the Minnesota Supreme Court has issued ethical rules which prohibit judicial candidates from soliciting money, from announcing their views on disputed legal or political issues, from seeking the endorsement of political parties or from even attending a political gathering. A student interrupted to ask why I was even running for the Supreme Court. Why indeed. And I had yet to explain that no incumbent Supreme Court justice in living memory had ever lost an election.

Many years ago, Minnesotans chose a state Constitution that called for the election of judges. They clearly rejected the federal system of appointing judges to lifetime tenure. Yet look at Minnesota today and an overwhelming number of the judges have been appointed to their posts, and they may as well have lifetime tenure because they are rarely opposed in elections. What went wrong?

We have created a result that is out of sync with our constitutional ideal. Or perhaps more accurately, the Minnesota Supreme Court, through the use of "ethical rules," has created this result.

Of course for each "ethical rule" there is a justification that sounds reasonable. But the unreasonable result is that there are no longer free and open elections for judges.

The Minnesota Supreme Court has the authority and the duty to see that the Constitution is followed; yet this court has created these rules and, in fact, recently changed them to make a viable opponent even more unlikely. On Jan. 1, the court ordered that judicial candidates could no longer attend or speak at political gatherings (something I had done for almost two years as a judicial candidate) and ordered that campaign committees could not seek the endorsement of a political party (something my campaign committee was seeking when the rules were changed).

No, I really don't need to hear someone justify this action taken by the court as a means to prevent judicial elections from being politicized. I have heard all the explanations, the rationalizations and the obfuscations — except one. No one has explained to me what happened to the concept of democratically elected judges. And if we did not have them with the rules prior to Jan. 1, we surely won't have them now.

The court was looking over its shoulder when it created these new rules, and it saw two things:

➤ In 1996 a relatively unknown candidate who spent $350 got an amazing 46 percent of the vote running against Justice Edward Stringer who spent over $300,000. That was too close for comfort.

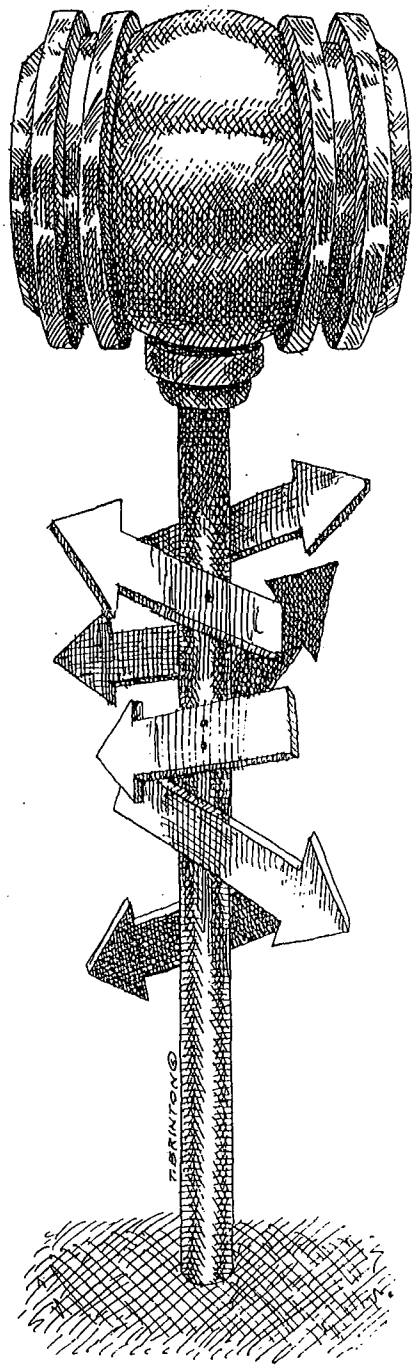
➤ A candidate was actively seeking the endorsement of a political party for 1998. (It was perhaps not a matter of my being a threat, but of others who might follow my example.) So hard were they looking over their shoulders, the judges did not pay attention to the most elemental of ethical rules, that a judge should avoid the appearance of impropriety. I appeared at the public hearing the Supreme Court held in 1997 regarding whether or not these new rules should be adopted and asked the judges who are to stand for election in 1998 to recuse themselves when deciding whether to adopt the new rules. Justices Alan Page, Sandra Gardebring and Esther Tomljanovich all refused to do so; although the primary effect, if not the primary purpose, of the rule changes was to stop their potential opponent's ongoing campaign. (Tomljanovich last week announced that she would retire Aug. 30.)

My campaign was stopped. As a result of these rules, I cannot tell the voters my positions on the issues most important to them in a judicial election. But the focus shifted to a lawsuit in federal court to try to instill some sense of democracy in judicial elections. In March 1998, I asked the federal court to strike down as violations of free speech the rules preventing judicial candidates from speaking to political party groups, as well as the numerous other rules which make a judicial campaign a heroic, but pointless, endeavor. The case is pending before the Eighth U.S. Court of Appeals.

Despite it all, I will run for the Supreme Court this fall with one message: I promise that if elected I'll do everything I can to restore democracy so the people of Minnesota can truly choose their leaders, even on the Supreme Court.

So why am I running for the Minnesota Supreme Court? Why indeed.

— Greg Wersal, of Golden Valley, is a lawyer in St. Louis Park.



CON

Partisanship would harm judges' election process

By George Soule

The Minnesota Republican Party's lawsuit to strike down current restrictions on campaigns for judicial office represents a serious threat to the independence of our state's judiciary.

This first strike apparently is aimed at toppling Minnesota's historic system of nonpartisan judicial elections. Injecting partisanship into judicial elections would be a step backwards in the selection of qualified judges and the delivery of impartial justice in Minnesota. Citizens should base their votes for judges on qualifications, not on party politics.

Until now, the participants in the judicial elections process have respected its nonpartisan nature. Elections are designated by statute as nonpartisan. Political parties, always free to support judicial candidates, have refrained from official participation in campaigns. Most judicial candidates have also shied away from partisan appeals.

The Republican lawsuit seeks to change this landscape. The challenge would strike down present restrictions so that judicial candidates could campaign for and use party endorsement, declare positions on issues that may come before them as judges, and personally solicit campaign contributions (including from potential litigants and lawyers who appear regularly in court). All of these activities are hallmarks of partisan elections.

Those elections would produce judges who are precommitted, based on party politics, to positions on issues that may come before them. Anyone involved in litigation will tell you that they want a judge who will listen to all sides, be fair to all litigants, and follow the law. Judges should not come into office with an agenda based on party politics.

The basic requirements of openness and impartiality — along with legal ability and experience, a good work ethic, community involvement, diversity on the bench, and judicial temperament should be the primary criteria for selecting judges.

If political parties get involved in endorsing judicial candidates, these basic qualifications may be ignored in favor of years of party service.

Partisan judicial elections would also put a damper on many aspects of judicial selection. Such a system may discourage potential judicial applicants who have never been involved in politics. Many outstanding Minnesota judges would never have made it to the bench in a partisan system.

Republican Party Chair Bill Cooper says that recent restrictions on partisan judicial campaigns favor incumbent judges. He must think that challengers would be aided by party endorsement. But if judicial elections are a partisan free-for-all, incumbents would also be free to obtain party approval. Would justice be served if sitting judges catered to political platforms and officials to ensure endorsement for re-election?

Cooper also says that the Republican lawsuit is necessary to deal with "activist judges."

Most neutral observers would rate Minnesota's judiciary as moderate, hardly a hotbed of judicial activism. Most Minnesota judges are too busy with the mundane details of hearing cases to be activists of any persuasion. But if Cooper is concerned with activist judges, adding party politics to judicial elections is exactly the wrong prescription.

Partisanship in judicial elections is a blank check for judicial activism — party-endorsed judges would come into office with a political agenda.

Proponents of partisan judicial elections should consider the experience of the few states that have such a system. In Cook County, Illinois, which includes the city of Chicago, judicial candidates must be on the Democratic slate to be elected. In Texas, candidates will raise and spend millions of dollars to win a single judicial seat.

No doubt, Minnesota's judicial election system can and should be improved. When an incumbent is challenged for election, or there is an open seat, the public deserves more information about the candidates.

The Minnesota State Bar Association has embarked on a campaign to call more attention to judicial elections and to provide more meaningful information to the public. The media, which paid scant attention to important judicial elections in 1996, must do a better job at covering the campaigns.

Partisan elections would be a setback to our independent judiciary in Minnesota. Partisanship should be reserved for policy-making bodies and officials, not judges sworn to enforce the law fairly and impartially. Participants in the judicial elections system should honor the state's historic commitment to a nonpartisan judiciary.

— George W. Soule is a Minneapolis lawyer.