Should Our Courts Serve the People, or the Governor and Special Interest Groups?

If you were standing before a judge in court which scenario would you prefer, knowing that your judge had been selected by the majority of your friends and neighbors based on their character, impartial temperament, and legal qualifications? Or that your judge had been appointed by a group of well-connected political elites as a reward based on bribes, their political views, or their connections to the “right” businessmen?

150 years ago when Minnesota joined the Union we had to make that choice, and ever since we’ve relied upon popular judicial elections to ensure the continued impartiality, competence, and independence of our highly-rated and nationally respected judiciary. Minnesota’s founders understood that the defense of individual liberty and the protection of our constitutional rights required more than just paper promises. It requires the implementation of a strong and competing system of checks and balances. They wisely recognized that the only sure way to create a judiciary independent enough to withstand the encroachment of the legislative and executive branches of government was by making all three branches accountable to and directly selected by the same source—the people of the state.

“Choosing Judges Based On Their Politics Under the Veil of a Disarming Name”

Unfortunately a group of Minnesotans, led by a former governor, the representatives of powerful special-interest groups, big businesses, and influential law firms, seems to feel they know better than our Founding Fathers, and have been pushing for the adoption of a new system of judicial selection known as Merit Selection and Retention Elections (MSRE). Not at all concerned about protecting the constitutional balance of power; their proposal, often presented in the guise of it being an “Impartial Justice Act” would, despite its rather innocent-sounding name, actually destroy the impartiality of our highly respected courts by ensuring the selection of judges based solely on their political and business connections—an idea rightly rejected by our state’s founders. If adopted such a plan would strip Minnesotans of their Constitutional Right to vote for judges in free and open elections and would instead confer the right of judicial selection solely to the governor and an elite committee of “nonpartisan” appointees handpicked by the state’s top political leaders.

While MSRE supporters paint a rosy picture of their proposal, the actual results in states that have already adopted their plans have been anything but encouraging, leading the former Chief Justice of Michigan to declare the dangerous idea one of “choosing judges based on their politics under the veil of a disarming name.”

Eliminating Free and Open Elections

Since Minnesota was founded in 1858 our Constitution has required that our judges be elected by the people. Only when a judge resigns, dies, or is removed is our governor allowed to appoint anyone to the
bench, and even then the Constitution only allows that appointee to serve until the next general election one year out from the date of the vacancy; at which time they are free to seek election to the actual judgeship alongside any other qualified candidates in a free and open nonpartisan election.

Under the proposed MSRE system, the governor would fill every open judicial seat through appointment, selecting only from candidates recommended by a “merit” selection committee whose members would also be responsible for recommending to the public whether a judge should be “retained” in a form of show election commonplace in dictatorships around the world. In a retention election when a judge’s name appears on the ballot it would be without any competition, with the only choice given to the people the question: “Do you wish to retain this judge?” If voters say Yes, the judge is re-elected; if they say No, the judge is removed and the governor appoints a replacement without the people having any vote or meaningful say at all.

By making the selection of all judges contingent upon the governor and this committee, and by empowering political appointees to determine whether a judge is doing a good job or not, MSRE ensures our courts would become nothing more than a rubber stamp for the state’s political establishment; remaining too weak and too beholden to the appointing authorities to defend the people’s rights from unconstitutional actions by the governor or legislature.

Retention Elections will force all judges to raise huge sums of money even though they have no opponent.

Placing a judge on the ballot without a challenger makes it far easier for political parties and special interests to target good judges for defeat in last minute smear campaigns, simply so that a new governor or merit committee can appoint a judge more to their liking. This forces every judge to raise huge sums of money if they want to be able to defend themselves from these slanderous dirty campaigns – sums of money judges in Minnesota currently don’t raise or spend. In fact, the amount of money spent by Minnesota Supreme Court Justice Helen Meyer in her contested 2010 re-election campaign was only $75,000; contrast that with the almost three million dollars spent in a nasty retention race in Illinois, or the almost one million spent by outside groups to oust three Iowa Supreme Court Justices in their retention election that same year.

By undermining the selection of judges, Undermining the Constitution for the Benefit of Special-Interest Groups and Politicians

Heavily promoted by a coalition of big-business, big-labor, and special interest groups with a vested interest in who sits on the bench, MSRE doesn’t simply undermine the independence of our court system, it destroys it in the name of preventing hypothetical problems Minnesota has never experienced. It is an inherently undemocratic proposal that undercuts the state Constitution’s carefully designed system of checks and balances. It pushes the politics of judicial selection out of public view and back into the smoke-filled rooms of yesteryear. And it’s based upon the flawed theory that ordinary citizens are too incompetent to elect their judges.

Minnesota voters are not a doltish bunch. Time and time again they have proven themselves intelligent enough to vote against candidates who have attempted to politicize the judicial election process. They have repeatedly voted to return honorable jurists to office following clean, moderately funded campaigns. And they have consistently removed from the bench those judges whose actions and behavior had rendered them unfit for fairly administering justice.

Proponents of MSRE believe justice is best served when administered by partisan bureaucrats handpicked by the state’s political and business elites to serve their interests instead of the people’s. But by adopting that mentality they have placed themselves at odds with Minnesota’s Founding Fathers who overwhelmingly understood that the people were far better qualified to select the state’s judges than the governor or any partisan committee. For as our Territorial Attorney General and first Chief Justice Lafayette Emmett wisely noted: “the governor always selects men belonging to his own political party, while the people often select them regardless of parties. If the people are incapable of selecting their judges, they are also incapable of selecting the man who is to appoint the judges.”

Undermining the Constitution for the Benefit of Special-Interest Groups and Politicians

**Reference Information**


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The views presented herein are those of the author and not necessarily MNCJ. Only with a thorough understanding of how our courts work, why they were designed as they were, and the threats they face, can Minnesotans ensure the contin- ued impartiality, independence, and accountability of their elected judiciary. This document is available for free educational use via the MNCJ website: www.mncij.org/article Abramson.html. Written, February, 2013.

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