Ensuring Impartial, Accountable, and Independent Judges

Since 1858 Minnesotans have relied upon popular judicial elections to ensure the impartiality, accountability, and independence of our state’s court system.

In an era of intense partisanship and under the looming threat of civil war, our Founding Fathers wisely recognized that the only sure way they could create a court system that would be both independent and impartial enough to protect the rights and liberties of ordinary citizens in even the most trying of times, was by creating a system where the people themselves, not the politicians and their appointed friends, would be directly responsible for selecting who had the right level of character and qualifications to serve as their judges.

Over 150 years later, Minnesotans can be proud that we have court system that remains directly accountable to us. Proud that our judges have become so internationally respected that even foreign nations have turned to them for advice. And proud that, while other states have allowed their judicial systems to be auctioned off to the highest bidder or made into mere marionettes of their politicians, the independence and impartiality of Minnesota’s courts has remained beyond question and administered by honorable jurists routinely elected with broad bipartisan support.

Keeping Our Courts Independent

According to our first Chief Justice, Lafayette Emmett: “...the facts will show that the people are much better qualified to select your judges than is the Governor. The Governor always selects men belonging to his own political party, while the people often select them regardless of parties.”

Our Founders, like Chief Justice Emmett, understood that when you allowed politicians, whether alone or by committee, to select judges, you undermine the very independence of the courts by making those appointed judges beholden to partisan politicians for their jobs – and thus making it less likely that those appointed judges would willingly overrule any illegal actions their powerful sponsors may take. In fact, not only does the court become less independent, it becomes, just as Justice Emmett claimed, more political, as very few governors ever appoint judges coming from political parties and backgrounds other than their own; an act that when left unchecked eventually undermines public confidence in the fairness and impartiality of the entire court system.

On the Importance of an Equal and Independent Judicial Branch

“...the dignity and stability of government in all its branches, the morals of the people and every blessing of society depend so much upon an upright and skilful administration of justice, that the judicial power ought to be distinct from both the legislative and executive and independent upon both, that so it may be a check upon both, as both should be checks upon that.”

- Thomas Jefferson
Popular judicial elections prevent both of these undesirable outcomes by ensuring all qualified individuals the ability to seek judicial office regardless of their political affiliation and without the need to curry favor with anyone other than the voters of their own districts. Instead of a court subservient to the executive branch and special interest groups, popular judicial elections give us a court subservient only to the people as a whole, ensuring the election of judges with diverse backgrounds and educations, and a court system strong enough to serve as an effective check upon unconstitutional activities by the governor or state lawmakers. Instead of a partisan, political court, because of popular judicial elections Minnesotans have a first-rate independent judiciary committed to upholding the rule of law and applying the constitution as written, instead of twisting the law to benefit political special interests and powerful well-connected politicians.

**Ensuring Accountability to the People, not to Special Interests**

While Minnesota’s Constitution provides lawmakers with the ability to impeach and remove bad judges, they have rarely chosen to utilize those powers, instead deferring to the independence of the judicial branch and leaving the oversight of judges directly to the Supreme Court. Invariably this creates the problem of asking public officials to police themselves – something that historically hasn’t worked out well within any branch of government. When judges are tasked with writing their own rules and punishing their own members, a club mentality can quickly set in, ensuring that major offenses go unpunished in any sort of meaningful fashion, and allowing bad judges to be left on the bench.

Popular judicial elections prevent this and ensure that the people never have to worry about whether the courts are policing themselves; because with judicial elections, if a bad judge is not removed by the courts, they can not only be removed by the people, but also replaced with a respected candidate of the people’s own choice. Likewise, if the justices of the Supreme Court fail to take their oversight responsibility seriously, the people can replace them with justices who will. No other system of judicial selection in use in the entire country provides the people so great and balanced a check on corruption or the abuse of power by judges than popular judicial elections.

Despite this there are states that, instead of relying upon popular elections or even a federal style confirmation process, have all their judges appointed by partisan politicians either directly or through a process known as “merit selection” coupled with “retention elections.”

Under direct appointments, judges become accountable not to the people but to the politicians who appoint and review their conduct; or when left unattended as at the federal level, to no one. Under most versions of the formal “merit selection” and “retention election” process in use today, the state’s governor fills all judicial vacancies through direct appointments, selecting only from those names forwarded to him by a committee of well-connected political appointees hand-picked by the state’s top partisan leaders. Judicial candidates who are not viewed favorably by this highly political committee are prohibited from ever serving as a judge no matter how respected or widely supported they are in their home districts; creating a situation where citizens wishing to obtain a judicial appointment must first curry favor with the state’s political elites, undermining their ability to be independent. To make matters worse, the appointed judge usually serves a full term before coming before the people in a “retention election” where the only choice the voters are given is a Yes or No answer to the question “do you wish to retain this judge?” If voters say
The Essential Role of Popular Judicial Elections

Yes, the judge is granted another full term; if they say No, the judge is removed and the governor simply responds by appointing a new judge as recommended by the political “merit selection” committee.

While supporters of such systems claim the people retain their right to vote for judges, in reality the people only retain the privilege of removing judges, and are sometimes forced to watch the same political machines that appointed the former corrupt judge, appoint an identical replacement. Some “merit” committees also publically recommend to the people whether or not they feel a judge should be retained, forcing judges to curry favor with them by ruling and behaving in a manner favorable to the committee’s interests instead of the people’s. Popular judicial elections prevent this sort of corruption, and ensure that judges and judicial candidates remain beholden only to the people they serve for their office, and not partisan bureaucrats or representatives of special interest groups.

Maintaining Checks and Balances

Under Minnesota’s Constitution all judges are required to be elected by the people to six year terms; ideally every judge would then serve out their complete term, and when they chose not to run again, the people would select another candidate in an open election. Unfortunately, for various reasons, including a mandatory retirement age set by the legislature, that doesn’t always happen and vacancies end up being created. Without some means to quickly fill these judicial vacancies, justice could grind to a halt, but if you simply allowed the governor or a political committee the power to appoint new judges to full terms unchecked, the independence of the courts would quickly be destroyed.

To prevent this our Constitution requires that the governor fill all vacancies by appointing a temporary judge in a manner laid out by state lawmakers, but also provides that the appointee would only serve until the next general election one year out from the date of the vacancy, at which time the voters would reclaim their right to select a new judge themselves in an open election in which any qualified candidate can run – including the temporary judge. When election time comes around many of these temporary judges choose to run for the actual judgeship, and when they are respected and widely supported on a bipartisan basis, are often elected without opposition. While it is inevitable that governors will appoint temporary judges who share their political views, should any governor attempt to pack the bench with unqualified judges, because of popular judicial elections the people maintain the constitutional right to not only remove the governor’s bad appointee, but to select their own broadly respected candidate to replace them.

As so many judges have chosen to resign early instead of serving out their full terms in recent years, many current judges initially served as appointed temporary judges before seeking the actual judicial office themselves. Without the check on the governor’s appointing power that popular judicial elections provide, the courts would quickly lose their legitimacy as governors stopped worrying about appointing qualified applicants and the courts, lacking true independence, would become just another arm of the executive branch. Because of popular judicial elections, the people retain the means to prevent this from happening.

Ensuring Impartial, Accountable, and Independent Judges

In addition to maintaining an independent and accountable court system separate and equal to the other two branches of government, popular judicial elections have also resulted in Minnesotans enjoying clean, moderately-funded judicial campaigns focused on matters of law instead of politics.
Under retention-based systems where the only candidate in the race is the incumbent judge and folks are only voting on whether to keep them or not, it’s so easy for special interest groups to sweep in under the radar at the last moment with lavishly funded smear campaigns that every judge, no matter how respected, becomes forced to raise huge sums of money simply to defend themselves from these unexpected attacks; sums of money they are not currently seeking to raise. But here in Minnesota if a judge is so widely respected that they do not have an opponent running against them, there is no need for them to raise much, if any, outside money at all.

But what happens to campaign spending when the voters need to remove a bad judge, or select a new one? While some states have had problems in this area, Minnesota never has, despite repeated warnings from opponents of judicial elections. In fact, time and again Minnesotans have demonstrated an unwillingness to, in the words of Justice Flandrau “permit an improper man to be inflicted upon them” by political parities or special interests and have routinely voted against candidates who have attempted to introduce political issues or negative campaigning into state judicial races.

Our Elected Courts, Over 150 Years and Going Strong

Thanks to a 150 year heritage of popular judicial elections, Minnesotans today retain both the constitutional right and the civic obligation to directly choose for themselves who they most trust to judge them and their neighbors when their liberties are placed at risk or their freedoms threatened.

Because of popular judicial elections Minnesotans never have to worry about whether the courts are strong enough to stop unconstitutional actions by the governor or legislature; or worry whether the judge sitting before them on the bench is a pawn of some business or special-interest group. Thanks to popular judicial elections every bad judge can be removed; every unqualified appointee replaced; and every good judge re-elected following moderately funded campaigns focused solely on matters of law instead of politics.

Because of popular judicial elections, no one but the people themselves can shape the destiny of our laws; and because the courts derive their legitimacy and powers directly from us, the law cannot be corrupted or our liberties imperiled unless we the people implicitly allow it through inaction.

Minnesotans today, just as when we joined the Union in 1858, understand how important it is to maintain a strong and independent court system separate from but equal to the other two branches of government. A court system accountable not to politicians and special interests, but directly to the people themselves. And that’s why the advice offered by Chief Justice Emmett during our constitutional convention remains as true today as when it was first spoken in 1857:

“I think that the great principle of an elective Judiciary will meet the hearty concurrence of the people of this State, and that it will be entirely unsafe to go before any people in this enlightened age with a Constitution which denies to them the right to elect all the officers by whom they are to be governed...if the people are incapable of selecting their Judges, they are also incapable of selecting the man who is to appoint the Judges.”

- Lafayette Emmett

To learn more about Minnesota’s elected courts, or to view and print your own copies of our state constitution and other documents, including this one, please visit Minnesota Citizens for an Independent Judiciary’s website at: www.mncij.org.