

Policy Advancement: Judicial Selection

A proposed statement on judicial selection is currently before the Citizens League Board of Directors. The statement was submitted by a short-term policy group formed out of the Citizens League Policy Advisory Committee.

Citizens League Policy Background on Judicial Selection

In 1988, a Citizens League study committee produced the report, "The Public's Courts: Making the Governor's Nominating Process Statutory." The Citizens League concluded that the central function of Minnesota's judiciary is to be impartial and interpret the law. To fulfill that function, the Citizens League called for a permanent commission to select judges based on merit and to put a process in law for governors to follow when appointing judges. In 1990, the Minnesota Legislature established the Commission on Judicial Selection which is in place today. Today, Minnesota elects its judges, though most retiring judges choose to leave mid-term to allow the governor to appoint their replacement, who later faces re-election. The general consensus is that this process has worked well.

What Has Changed?

The U.S. Supreme Court, in the case of Republican Party of Minnesota v. White (2002), held that states may not prohibit judicial candidates from announcing their views on disputed legal or political issues. This decision struck down long-established Minnesota "canons," or ethical requirements, that were designed to prevent judicial candidates from taking positions on issues they might have to rule on, thus preserving the impartiality of judges.

Conclusion

The White decision creates the possibility of partisan political campaigns where judges are expected to make political promises before they hear the merits of a specific case. This violates the principle of impartiality. The judicial branch of government is designed to be one of the great checks and balances in our democracy, and there is no clear way in which partisan elections serve this function. For the courts to provide the proper balance in our system of government, judges should not be establishing political positions in the same manner as those who are elected to pass laws.

Recommendations

The risk to the impartiality of Minnesota's judiciary is too high to leave the current system in place.

Option 1: Continue the existing merit-based appointment system and offer a constitutional amendment to voters in 2008 to remove judicial elections from the Minnesota constitution.

Option 2: Retain judicial appointment system based on a strong merit selection process, but replace traditional elections with a retention election through a constitutional amendment. Sitting judges would be evaluated by a judicial evaluation commission and rated as "qualified" or "not qualified" to continue in office. This rating would appear on the ballot. If a majority of voters vote no, the judge would be removed from office and a new judge would be appointed. Although this would help maintain an impartial and independent judiciary and is better than the status quo, it does not preclude special interests from becoming involved in judicial elections. Interest groups could still argue and run a campaign supporting or questioning the qualifications of the sitting judge.