

Understanding the Minnesota Judiciary: Impartiality and Elections

Lesson Plan

Abstract: Students will learn about judicial elections and impartiality through case studies on the exercise of First Amendment rights in judicial elections, limitations on corporate contributions, and procedures to protect impartiality. Strategies used include jigsaw of case studies and deliberation on proposed change to the Minnesota Constitution regarding judicial elections.

Objectives:

1. Students will understand the concept of an impartial judiciary
2. Students will explore the connection between an impartial judiciary and the rule of law.
3. Students will understand the challenges of regulating campaign speech
4. Students will understand recent and proposed changes in judicial selection in the state of Minnesota
5. Students will explore their views on the proposed Constitutional Amendment

Grade Level: 9-12

Time to complete: Three class periods.

Materials needed: Minnesota State Bar Association Civic Education Committee *Selecting Judges Rule of Law and Independent Judiciary*; Student Handouts: *Minnesota Republican Party v. White*, *Caperton v. A.T. Massey Coal Co.*, and *Citizens United v. Federal Elections Commission*, Supreme Court Case Study Guide; Deliberating in a Democracy Instructions; Student Handout: Judicial Elections; Minnesota Constitution

Procedure:

Class Period One

1. Introduce impartiality.
 - a. Minnesota State Bar Association lesson on rule of law and independent judiciary
 - b. Tryjudging site. Although this is a Canadian site, it features short videos that introduce impartiality concerns in an engaging way. Use will require identifying the Canadian information such as Canadian flag, judicial dress, Canadian Constitution, reference to the "crown". In addition, the video Case Two "Why must judges be Fair and Impartial" says that

prejudging issues by stating opinions is not allowed. Under recent US Supreme Court decisions, judges in the United States are allowed to state opinions. Case Five engages students in helpful conversation about judicial independence. Extension activity: Have students research recent Supreme Court elections in Iowa.

Link: <http://www.tryjudging.ca/>

Class Period Two

2. Conduct Supreme Court Cases Jigsaw. This strategy will help students learn about three US Supreme Court cases.
 - a. Introduce activity by discussing the role of the US Supreme Court in interpreting the US Constitution and how the court writes opinions that explain its reasoning.
 - b. Organize students into three groups (or six if class size demands).
 - c. Assign one case (from the three provided cases studies) to each group. Have the students read the case study. They may do this individually or as a group. Using the "Supreme Court Case Study Guide", ask the students to answer the questions about their case as a group. Each student should complete the "Supreme Court Case Study Guide" (for use in the second group). Students should discuss the questions and decide how best to present the important information to the other students.
 - d. Re-group by having at least one person from each case study group join a new group.
 - e. Within each new group, representatives from each case study group will present the important information about their cases to their new groups and will learn about the other cases. Compare cases and draw some conclusions.
3. Review the impartiality challenges presented by judicial campaigns:
 - a. How do judges raise money?
 - b. What is the impact of judges presenting viewpoints during campaigns?
 - c. Can judges who accept money and state viewpoints be fair, impartial, and open-minded?

Class Period Three

4. Introduce Minnesota's judicial elections by examining Article VI of the Minnesota Constitution.

- a. What are the qualifications for becoming a judge? (Learned in the law and in good standing: added by statute).
 - b. What are the two ways in which a lawyer becomes a judge (run for election or by governor appointment)?
 - c. What are the strengths and weaknesses of each method?
 - d. What additional qualifications would be important?
 - e. How would you evaluate judicial candidates?
5. Explain the initiative to amend the Minnesota Constitution using the “Judicial Elections” Deliberating in a Democracy strategy. Ask students to read the first page.
 6. Conduct the Deliberation according to directions in strategy.

This lesson plan was developed as part of a curriculum-development workshop that was sponsored by the Minnesota Supreme Court Historical Society, with the assistance of the Minnesota Supreme Court, the Minnesota State Bar Association Civic Education Committee, and the Learning Law and Democracy Foundation. Lesson development was supported in part with funds from the Arts and Cultural Heritage Fund of the Clean Water, Land, and Legacy Amendment to the Minnesota Constitution, which Minnesotans passed into law via the 2008 general election ballot.

DELIBERATING IN A DEMOCRACY:

MINNESOTA ISSUES

1 **Do you think that Minnesotans should amend the Minnesota Constitution so that**
2 **judges face retention elections rather than campaign against a specific judicial**
3 **candidate?**

INTRODUCTION

4 Under Minnesota's Constitution, Minnesota state court judges are elected to six year
5 terms. When a judge retires during his or her term, the Governor appoints a
6 replacement who then runs for office at the first election that occurs at least one year
7 after the appointment.

8 Historically, Minnesota's judicial elections have been unlike elections for legislators and
9 the governor. The lawyers running for election to become a judge have run as
10 nonpartisan candidates, which means they have not sought the endorsement of political
11 parties. In addition, they have not engaged in the level of political advertising used by
12 other types of candidates and they have not explained their positions on issues that
13 might come before them. Many believe these practices keep judicial elections impartial
14 and are critical to preserving Minnesota's independent judiciary.

15 Recently, decisions from the United State Supreme Court and the 8th Circuit Court of
16 Appeals have changed this. Now, judges are free to express opinions, fundraise to
17 support their campaigns with minimal restrictions, and seek political party
18 endorsement. Fear that these changes threaten judicial impartiality has resulted in a
19 proposed constitutional amendment to change the way Minnesota judges are elected.

20 The bills that have been under consideration by the Minnesota House of
21 Representatives and the Minnesota Senate (HF 224 and SF 70) propose a constitutional
22 amendment that would ask voters if they would like to change the way Minnesota's
23 judges are selected. Initially, all judicial candidates would first go before a Merit
24 Selection Committee that would evaluate each candidate's qualifications based on
25 nonpartisan factors such as integrity, ability, judicial temperament, experience, and
26 legal knowledge. The Committee would then recommend three to five candidates to
27 the Governor who would pick from that list. At election time, voters would be asked
28 whether a current judge should be retained rather than choosing between two or more
29 judicial candidates or seeing an unopposed judicial candidate on the ballot — something
30 that occurs in 90% of all judicial elections. If the majority of voters vote not to retain a
31 particular judge, he/she would step down, and the governor would appoint a
32 replacement.

33 **Do you think that Minnesotans should amend the Minnesota Constitution so that
34 judges face retention elections rather than campaign against a specific judicial
35 candidate?**

36 **POSITION SUMMARIES**

37 **Yes:** Expensive and uncivil judicial elections, fueled by interest group contributions,
38 increased partisanship, and judicial candidates stating their positions on controversial
39 issues currently plague elections in the Midwest. It is only a matter of time before
40 Minnesota faces this trend which, if not checked could permanently undermine the
41 fairness and impartiality of the judiciary.

42 **No:** Judicial elections enable the public to better “reign in” the judiciary by providing a
43 significant measure of self-government to voters. The people serve as a check on the
44 Executive’s power to appoint as well.

Information Sources:

<http://wdoc.house.leg.state.mn.us/leg/LS86/HF3829.0.pdf> Bill proposing constitutional amendment. (see page 2, line 2.5)

http://www.minnpost.com/community voices/2010/03/11/16567/let_minnesota_voters_decide_how_judicial_selectionelection_is_done

http://www.minnpost.com/community voices/2010/03/08/16472/judicial_elections_whats_wrong_with letting_the_people_choose

http://www.fed-soc.org/publications/pubid.90/pub_detail.asp

http://www.fed-soc.org/publications/pubid.90/pub_detail.asp

http://news.minnesota.publicradio.org/features/200205/13_stawickie_wersalworld/index.shtml

YES

Contested elections lead to appearance or reality of judges being beholden to interest groups, lawyers, political parties, campaign donors; this reduces confidence in the justice system.

The U.S. Supreme Court's White and Citizens United decisions will lead to changes in Minnesota's culture of impartiality. People point to negative campaigns in Wisconsin and other states and fear that it is just a matter of time before this happens here.

30-second sound bites are often designed to inflame rather than assist voters in making an informed choice.

If the governor chooses from the Merit Selection Committee's recommendations to make initial judicial appointments, there is greater control of candidate qualifications. Under the current system, any lawyer can file to run, even poorly qualified lawyers.

Retention process makes judges accountable to entire community. Only about 10% of sitting Minnesota state court judges ever have a challenger at election time, so the retention system actually serves to make all judges more accountable to voters.

Judges are different than policy makers; they should be above politics and the influence of interest groups. Judges are not elected to represent the views of the people who vote for them.

Courts typically spend little time considering the controversial issues that dominate other political campaigns and it is not desirable to focus judicial elections on these issues.

NO

Minnesota currently elects judges and the system has worked well, why change it?

Control of judiciary is placed in the hands of a few when a small commission recommends lawyers for judicial appointments and subsequent elections don't permit lawyers to run against them.

Nominating commissions are influenced by the politics of interest groups such as the bar, and the transparency is not there.

The governor's office becomes too powerful under the retention system. Even if the people reject the governor's appointment, the governor gets to appoint the successor.

Elections that are based on judge's record and performance, rather than a live candidate, will not generate enough publicity for the public to cast an informed vote. Judicial elections with retention elections have even lower voter turnout.

Voters are more informed when they are exposed to campaign speech, and endorsements help voters know who agrees with their positions.

Judges make policy even if they claim they don't. It would be better to have them be forthright about it.

When voters are not comparing two candidates, it is hard to determine if the sitting judge is a "good" person for the job.

Appointments followed by retention elections trust that the governor will be committed to appointing impartial judges and not party loyalists and personal friends.



- Objectives
 - Apply new knowledge about ethanol to a current controversy
 - Increase understanding of multiple arguments: reasonable people differ
 - Become familiar with Deliberating in a Democracy process and materials and other materials for teaching controversial issues
 - Have fun!

- **What Is Deliberation?**
 - it is the focused exchange of ideas and the analysis of arguments with the aim of making a decision.
- **Why Are We Deliberating?**
 - Citizens must be able and willing to express and exchange ideas among themselves, with community leaders, and with their representatives in government.

Today's Question...

Do you think that Minnesotans should amend the Minnesota Constitution so that judges face retention elections rather than campaign against a specific judicial candidate?

Deliberating Procedure

- Introduction
- Reading and Discussion
 - Highlight important facts and ideas, ask questions
- Grouping
 - Divide class into groups of 4-6 people.
- Introduce Deliberation Question
- Each group divides into two teams: A and B
 - Working as a team, Team A finds most compelling reasons supporting the Deliberation Question;
 - Working as a team, Team B finds most compelling reasons opposing the Deliberation Question
- Present most Compelling Reasons

Deliberating Procedure (part II)

- Reverse Positions
 - Select most compelling reasons (both from those stated and from the reading)
- Drop Team Roles, Deliberate as a Group
 - Present individual positions
 - Find areas of agreement
- Debrief