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Ballot Issue "A": Selection of Judges

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South Dakota State University, Cooperative Extension, "Ballot Issue "A": Selection of Judges" (1980). *SDSU Extension Fact Sheets*. 817.

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Ballot Issue "A"

Selection of Judges



**COOPERATIVE EXTENSION SERVICE
SOUTH DAKOTA STATE UNIVERSITY
U.S. DEPARTMENT OF AGRICULTURE**

Ballot Issue "A"

Selection of Judges

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A proposed amendment to the South Dakota Constitution, referred to the voters by the legislature, would change the way we select judges.

The South Dakota Judicial System

According to the South Dakota Constitution, the judicial power of the state is vested in a unified judicial system consisting of a Supreme Court, circuit courts of general jurisdiction, and courts of limited original jurisdiction as established by the Legislature.

Supreme Court. The South Dakota Supreme Court is the state's highest court. Currently, it consists of five justices including the chief justice. Each justice is chosen from a separate district of the state by the qualified voters of that district.

Circuit Courts. The Supreme Court determines the number of circuits and circuit court judges. Presently, there are eight circuits. The number of judges per circuit ranges from three to six and there are a total of 36 judges for the eight circuits.

Courts of Limited Jurisdiction. Courts of limited jurisdiction, involving magistrates both with and without formal legal training, are created by the legislature. Magistrates are appointed "in sufficient number" by the presiding circuit court judge in each judicial circuit.

Commission on Judicial Qualifications. This seven-member commission, with powers provided by the legislature, investigates complaints against justices and judges and conducts hearings concerning removal or involuntary retirement of a justice or judge.

The commission in recent years has played a larger role in selecting judges to fill vacancies on the circuit and supreme courts.

Vacancies in elected judicial offices are, according to the Constitution, filled by appointment by the governor for the balance of the unexpired term. During recent administrations a working relationship has developed whereby most of the governor's appointees have been selected from a list of three names submitted by the Judicial Qualifications Commission.

Members of the Judicial Qualifications Commission are themselves selected as follows: Two members are elected from among judges of the circuit court; three members are appointed by the president of the state bar from among members of the bar; and two members are appointed by the governor from among the state's

citizens. (These citizens may not include judges, retired judges, members of the state bar, or two citizens of the same political party.)

Present Selection Process

Justices of the Supreme Court and judges of the circuit court are selected for an 8-year term in a non-partisan election by the electorate of the district or circuit each represents. Vacancies are filled by the governor by appointment for the balance of the unexpired terms.

Proposed Changes

Two changes in the judicial selection process would occur if the proposed constitutional amendment is passed by a majority vote.

First, the working relationship whereby the Judicial Qualifications Commission has nominated candidates to fill Supreme Court and circuit court vacancies would be formalized. The proposed amendment would **require** that the governor fill such vacancies by appointment from a set of two or more persons nominated by the Judicial Qualifications Commission.

A second change would involve the manner of election for Supreme Court justices only.

Elections for justices would be only on a retention basis. That is, incumbent justices would be subject to approval or rejection on a non-partisan ballot.

Voters would cast a "yes" or "no" vote for each justice's retention after his or her performance is on record. A majority vote against the retention of a Supreme Court justice would create a vacancy to be filled by gubernatorial appointment. Those justices appointed to fill vacant offices would be subject to a retention vote at the first general election following the expiration of 3 years from the date of appointment. Thereafter, the justice would be subject to the same approval or rejection vote every eighth year.

All incumbent Supreme Court justices would be subject to a vote on retention in the general election in the year in which their respective existing terms expire.

Discussion

The retention election method for electing justices, popularly known as the "Missouri Plan," has been proposed as a way to acquire judicial

expertise while preserving popular responsiveness.

During the past 25 years, no state using the Missouri Plan has changed to any other method of selecting judges. Missouri and California adopted the method in 1940; presently, nine states utilize it.

Research studies by political scientists have compared the Missouri Plan with partisan judicial selection. The change in South Dakota, however, would be from non-partisan contested elections of Supreme Court justices to retention elections for such justices.

One research finding does seem relevant. Retention elections rarely result in the rejection of an incumbent. In Missouri, only one judge in 179 elections has been rejected.

The present system of electing Supreme Court justices offers direct popular choice between contestants for seats on the Supreme Court. Incumbents have often been defeated in recent elections. Citizens may want to consider the value of retaining or dispensing with contested elections for the Supreme Court.

The proposed constitutional change would give significant additional power to the Judicial Qualifications Commission at those times when Supreme Court or circuit court vacancies arise. Professional members of the Commission (judges and members of the bar) are likely to exert leadership in passing judgment on qualifications of nominees. Citizens can choose to endorse or to restrict such professional leadership with votes for or against the proposed amendment.

Text of the Amendment

The proposed constitutional amendment to revise the judicial selection process will be issue

“A” on the ballot. A “yes” vote would be a vote in favor of the amendment, while a “no” vote would be a vote against the amendment. The full text of the proposed amendment follows.

§7. Judicial selection.

Circuit court judges shall be elected in a non-political election by the electorate of the circuit each represents for an eight-year term.

A vacancy, as defined by law, in the office of a Supreme Court justice or circuit court judge, shall be filled by appointment of the Governor from one of two or more persons nominated by the judicial qualifications commission. The appointment to fill a vacancy of a circuit court judge shall be for the balance of the unexpired term; and the appointment to fill a vacancy of a Supreme Court justice shall be subject to approval or rejection as hereinafter set forth.

Retention of each Supreme Court justice shall, in the manner provided by law, be subject to approval or rejection on a nonpolitical ballot at the first general election following the expiration of three years from the date of his appointment. Thereafter, each Supreme Court justice shall be subject to approval or rejection in like manner every eighth year. All incumbent Supreme Court justices at the time of the effective date of this amendment shall be subject to a retention election in the general election in the year in which their respective existing terms expire.

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File: 5.38—15,000 printed at estimated 4 cents each—8-80mb—6660A.

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