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Elect or appoint?

To maintain integrity, appoint justices

By FREDERICK P. KESSLER

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As articulated by the Founding Fathers, the judiciary is intended to be the least political of the three branches of government. Judges are to be honest and fair interpreters of the law. Yet how fair and impartial could a person be when certain groups spend millions of dollars to get that person elected?

To address Wisconsin's experience with two well-financed, nasty campaigns in 2007 and 2008 for the state Supreme Court, I have proposed an amendment to the state Constitution that would give the governor the authority to appoint Supreme Court justices. After a gubernatorial appointment, justices would have to be confirmed by a majority vote in the state Senate. At the conclusion of a 10-year term, justices would be automatically reappointed, unless 21 of the 33 members of the Senate vote against reappointment. If the justice is not reconfirmed by the Senate, the governor appoints a new justice.

Reforming the judicial selection process would curb the outlandish amounts of money that are spent by outside interests to get their candidate elected. Mike McCabe of the Wisconsin Democracy Campaign estimates that the campaigns of both candidates spent a combined total of roughly \$1.5 million in the Gableman-Butler election. In contrast, McCabe estimates that outside interests spent at least \$4.5 million, leaving the total spending for the campaign at \$6 million. That would break the \$5.8 million record set by last year's costly Ziegler-Clifford election.

A study by the Brennan Center for Justice at New York University showed that third parties spent nearly nine times the amount spent by the candidates on advertising. In this situation, the messages of the candidates are lost in the mix. Their voices are drowned out by the deafening volume of their moneyed third-party supporters.

One particularly interesting aspect of this election was that various groups would spend such a substantial amount of money on issues that are unrelated to the purpose of their group. According to the Brennan study, Wisconsin Manufacturers & Commerce led the charge of third-party ads, spending an estimated \$1.2 million on ads that primarily dealt with the issue of crime.

However, crime was obviously not the issue before the Supreme Court that WMC, the state's largest pro-business lobby, was concerned with. The group's actual concern was that Louis Butler had sided with the majority against businesses in a case involving tort claims in a lead paint case. WMC unquestionably chose to focus on the issue of crime because it is far more important to voters.

Beyond the amount of money spent by outside interests and the content of the ads, there is also the fact that the

sources of their funding are unknown. Interest groups are not required to disclose exactly who is responsible for their funding and how much each is responsible for. These groups are able to run misleading, negative ads against their opponents in near-complete anonymity.

The tone of these recent campaigns will continue to have ramifications into the future. It is easy to see why campaigns of this nature would dissuade highly qualified lawyers from stepping away from their practices in favor of public service, knowing the type of campaigns they will have to endure when they seek election.

It is also important to point out that appointment of judges is not "undemocratic," as some critics have tried to say. The majority of states and the federal government initially select Supreme Court justices through a process of appointment, either by the executive or Legislature.

The disproportionate impact of special interest contributions and dishonest, misleading and offensive campaign advertisements are doing serious damage to the public's perception that the judicial system is fair and impartial. The state should protect the integrity of the Supreme Court. Wisconsin needs judicial selection reform now.

Rep. Frederick P. Kessler (D-Milwaukee) represents the 12th Assembly District. Rep. Frederick P. Kessler (D-Milwaukee) represents the 12th Assembly District.

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