



American Justice Partnership Foundation

AJPF Survey Initiative

Voter Opinion on the Election or Appointment of State Supreme Court Justices

July 2008

Results of a National Voter Opinion Survey
Conducted By:

AYRES
& MCHENRY
ASSOCIATES, INC.

The **American Justice Partnership Foundation Survey Initiative** is an ongoing effort to provide the public with insights about the effectiveness and impact of state civil justice systems. AJPF conducts and publishes research on the performance of state civil justice systems, which can be accessed on the AJPF website. Dan Pero, President, 600 South Walnut Street, Lansing, MI 48933 517-371-7276 © 2008 American Justice Partnership Foundation. All rights reserved. www.AmericanJusticePartnership.org

Introduction

The question of how to select state Supreme Court justices has been the focus of increasingly intense debate throughout America in recent years. While each state is free to determine its own methods for choosing state Supreme Court justices, most states utilize one of two systems: direct judicial elections by the people or appointment of justices from a list of candidates developed by a judicial nominating commission. Currently 21 states hold elections and 24 states use a nominating commission/appointment process, the rest rely on gubernatorial or legislative appointment. [[SOURCE: American Judicature Society]]

As judicial elections have become more expensive and contentious, advocacy groups have been formed to lobby state governments to end judicial elections and adopt a nominating commission/appointment process. While the American Justice Partnership Foundation takes no official position on this question, we believe the decision to abolish the peoples' right to select state Supreme Court justices – a right enshrined in many state constitutions – should not be taken lightly.

Scholars, judges, lawyers and other members of the legal community have been unable to reach a consensus over which system yields superior state Supreme Court justices. Although many studies have been issued supporting both systems, up until now no objective public opinion surveys have been conducted to determine the will of the voters.

In order to inform this debate, the American Justice Partnership Foundation recently commissioned a nationwide survey by the respected opinion research firm of Ayres, McHenry & Associates, Inc. to determine public attitudes toward these two systems. Between May 27 and June 1, 2008, the firm surveyed 808 registered voters drawn at random from all 50 states plus the District of Columbia. Consistent with past voter turnout, the sample is 48 percent male and 52 percent female; 78 percent white, 12 percent black, and 8 percent Hispanic, with the remainder other races/refused. The survey's margin of error is plus or minus 3.45 percent.

A summary of the survey's results follows, but one point is abundantly clear: Voters across America overwhelmingly support the direct election of state Supreme Court justices over a nominating commission/appointment process. This support is remarkably stable regardless of the arguments used against judicial elections. Our hope is that the results of this survey will help state leaders better understand the will of the people as they wrestle with the important question of how best to select justices for the highest state courts.



Dan Pero

Dan Pero

President

American Justice Partnership Foundation

Voter Opinion on the Election or Appointment of State Supreme Court Justices

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Summary of Findings

This survey finds that voters overwhelmingly support electing state Supreme Court judges rather than having them appointed by a governor, and it finds that this view is remarkably stable in the face of arguments for each position.

While voters support electing judges, they do not think that public financing of their campaigns is a good idea, and they overwhelmingly believe that trial lawyers should not be allowed to donate to judicial campaigns.

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I. Voters Want State Supreme Court Judges Elected, Not Appointed

Voters overwhelmingly believe that state Supreme Court judges should be elected by the voters, rather than be appointed by a governor.

With a few differences between states, there are essentially two ways to become a state Supreme Court judge in America (ROTATE):

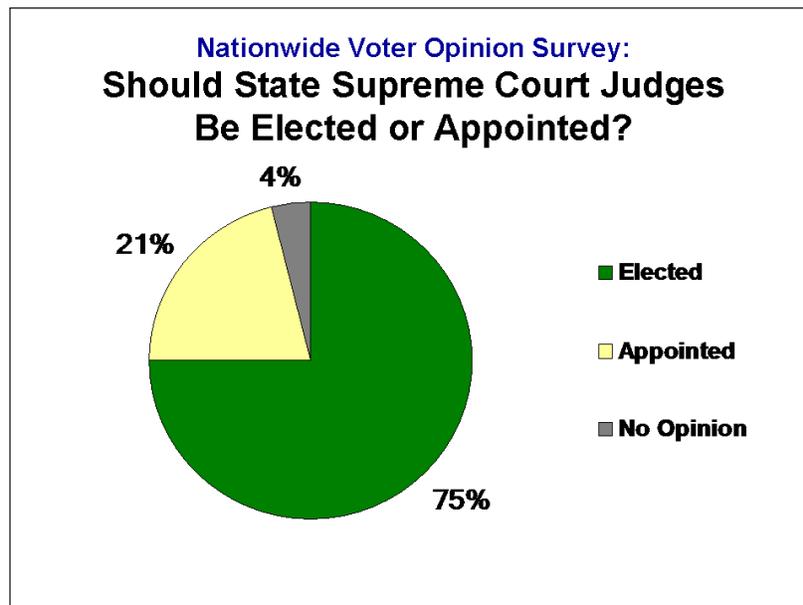
a. A person can be elected by the voters for a set number of years after a campaign in a regular election. To gain additional terms, the person must be reelected over any opponents by the voters.

Or

b. A person can be appointed by a governor for a set number of years from a short list recommended by an advisory board of lawyers and laypeople. To gain additional terms, the person must win an up-or-down vote in an election, but he does not run against any opposing candidates.

In general, do you think state Supreme Court judges should be elected by the voters, or appointed by a governor?

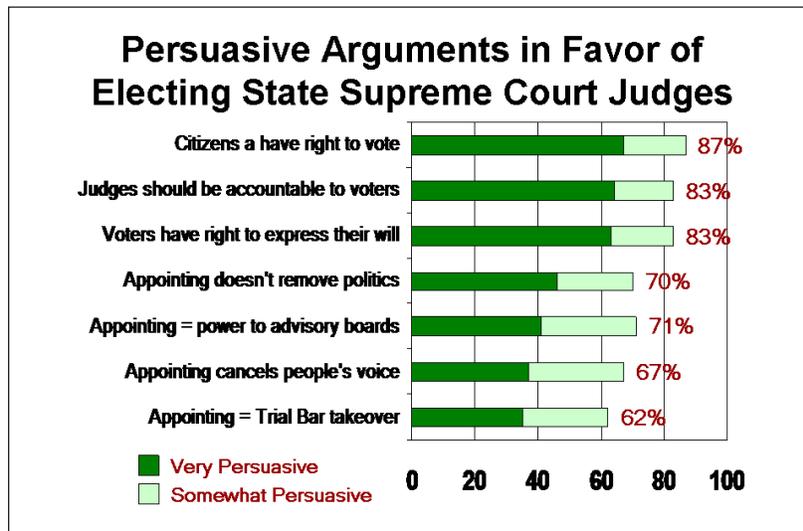
Seventy-five percent of voters think that state Supreme Court judges should be elected, while 21 percent think they should be appointed. After hearing a variety of arguments in favor of each position, voters maintain this position by a nearly identical 74 to 23 percent margin.



II. Several Arguments in Favor of Electing State Supreme Court Judges Are Very Persuasive

Here are several arguments to support having state Supreme Court judges elected by the voters. For each one, would you please tell me if you think that argument is a very persuasive, somewhat persuasive, or not very persuasive reason to have elected judges:

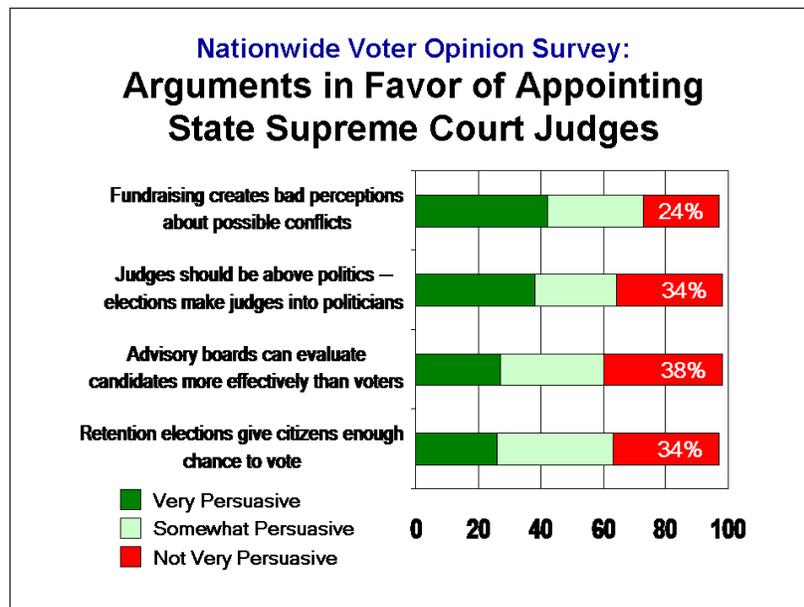
	VERY PERSUASIVE	SOMEWHAT PERSUASIVE	NOT VERY PERSUASIVE
<i>In a government of the people, by the people, and for the people, the people have a right to choose the judges who will make decisions that affect their lives.</i>	67%	20%	13%
<i>Judges should be held accountable for their decisions. The best way to do that is to have the judges run for reelection against an opponent and let the voters decide.</i>	64%	19%	15%
<i>Given the number of political decisions that judges make these days on issues like abortion, guns, and gay rights, the voters should have a right to express their will through judicial elections.</i>	63%	20%	16%
<i>Appointing judges does not remove politics from judicial selection. It simply moves it behind closed doors in secret without any opportunity for the voters to participate.</i>	46%	24%	29%
<i>If judges are appointed, it gives enormous power to an advisory board of legal experts and political appointees who are not elected or accountable to anyone.</i>	41%	30%	26%
<i>The voice of the people is shut out with appointed judges. Even if the voters reject an appointed judge in an up-or-down vote when the judge wants another term, the people still have no voice in the selection of a new judge.</i>	37%	30%	31%
<i>If judges are appointed, trial lawyers will take over the selection process to get their friends appointed who will give them favorable rulings.</i>	35%	27%	37%



III. Arguments in Favor of Appointing State Supreme Court Judges Are Not Nearly as Persuasive

Here are several arguments to support having state Supreme Court judges appointed by a governor from a list recommended by an advisory board of lawyers and laypeople. For each one, would you please tell me if you think that argument is a very persuasive, somewhat persuasive, or not very persuasive reason to have judges appointed by a governor:

	VERY PERSUASIVE	SOMEWHAT PERSUASIVE	NOT VERY PERSUASIVE
<i>If judges have to get elected, they have to raise money to fund campaigns, which in recent years have sometimes cost millions of dollars. That creates the perception that they are beholden to their contributors, which undermines the integrity of the courts and exposes them to conflicts of interest in later judicial rulings.</i>	42%	31%	24%
<i>Judges should be above politics, and forcing them to run campaigns and ask for votes makes them just like politicians.</i>	38%	26%	34%
<i>An advisory board of lawyers and laypeople is better able to evaluate the qualifications of potential judges than the voters, so they will produce better judges.</i>	27%	33%	38%
<i>With appointed judges, the voters still get a voice through the up-or-down election when the judge wants another term.</i>	26%	37%	34%

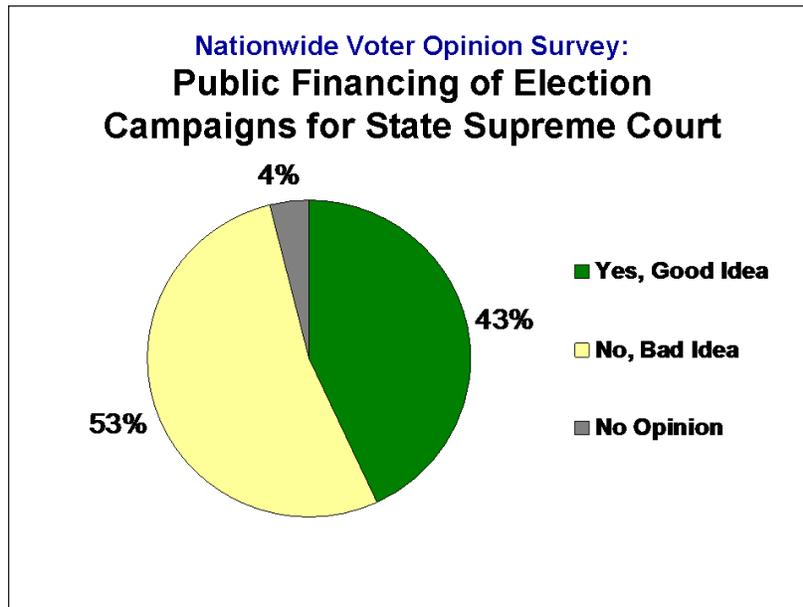


IV. A Majority of Voters Thinks That Public Financing of Judges' Campaigns is a Bad Idea

When judges are elected, some people have proposed public financing, or having judges' campaigns paid for with taxpayer dollars. Which of the following comes closer to your view (ROTATE):

- a. Public financing of judges' campaigns is a good idea, because it limits the amount of money spent on these campaigns, and it removes the possibly corrupting influence of campaign contributions by lawyers and others who might have cases come before the court.
- b. Public financing of judges' campaigns is a bad idea, because taxpayer dollars should not be used to pay for political campaigns, and it will increase the influence of outside groups that will just spend more money to affect the outcome of judicial elections.

Fifty-three percent of voters say that public financing is a bad idea, while 43 percent think it is a good idea.



About Ayres, McHenry & Associates

Ayres, McHenry & Associates, Inc. is a national public opinion and public affairs research firm located in Alexandria, Virginia that specializes in providing research and strategic advice for corporations, associations, and Republican candidates for public office. *Roll Call*, a widely-read newspaper on Capitol Hill, called the firm "one of the best in the nation," and *Campaigns & Elections* magazine cited Whit Ayres and Jon McHenry as two of the political world's "Movers and Shakers."

Ayres, McHenry & Associates belongs to the American Association of Public Opinion Research, the National Association of Republican Campaign Professionals, where Ayres serves as a member of the Board of Directors, and the American Association of Political Consultants, where Ayres serves as a member of the Board of Directors and Vice President.

The firm provided polling for Georgia Senator Paul Coverdell's upset of Wyche Fowler in 1992 and Tennessee Senator Bill Frist's upset of Jim Sasser in 1994. Other political clients include U.S. senators Lamar Alexander (TN), Bob Corker (TN), Lindsey Graham (SC), and Jeff Sessions (AL); Governor Bob Riley (AL), former governors David Beasley (SC) and Carroll Campbell (SC); and the 1996 Lamar Alexander for President campaign.

Whit Ayres graduated cum laude from Davidson College in Davidson, North Carolina, with a major in political science. He received an M.A. and Ph.D. in political science from the University of North Carolina at Chapel Hill.

His comments and analyses appear periodically in *The Wall Street Journal*, *The New York Times*, *The Washington Post*, *The Los Angeles Times*, *USA Today*, *The Atlanta Constitution*, and numerous regional newspapers. He is also a periodic guest on Fox News, CNN, National Public Radio, and C-SPAN's Washington Journal.

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