



WISCONSIN CATHOLIC CONFERENCE

EYE ON THE CAPITOL
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QUESTIONS FOR THE SUPREME COURT CANDIDATES

By John Huebscher, Executive Director

Living in a democracy means there is always an election. The next one of interest to many is for a seat on Wisconsin's seven-member Supreme Court. The primary election for this office is February 20th and the general election is April 3rd.

This year, the contest is of special interest for two reasons. First, because Justice Wilcox is retiring at the end of his term there will be no incumbent with a built in advantage. This "open seat" is unusual in a court contest and makes for a competitive race.

The second reason is that many view the court as closely divided between 3 "liberals" and 4 "conservatives." Since Wilcox, a former Republican legislator, was viewed as a conservative, the election could alter the balance on the court, at least on certain cases.

Races for the Supreme Court, like all judicial elections, are nonpartisan. But support for candidates often aligns along party lines. That seems to be the case this year. Prominent Democrats and interest groups that tend to support them are lining up behind Madison attorney Linda Clifford. Republicans and groups that support them are backing Washington County Judge Annette Ziegler of West Bend. A third candidate, attorney Joseph Sommers of Oregon, has so far received less attention.

In recent years, individuals and groups have supported or opposed candidates based on their perception of how the candidate may rule on certain issues such as abortion, school choice, regulation of business, protection of the environment, and so on.

Generally, candidates for the court avoid specifics as to how they will rule on cases. Indeed, a current judicial regulation prohibits such discussion. This regulation faces a legal challenge on the grounds that it interferes with a candidate's first amendment right to free speech and the public's "right to know" about its officials. It is unlikely, however, that the legality of this regulation will be settled by April.

That's probably just as well. For a judge's policy preferences are not what matters. His or her judicial philosophy does.

Supreme Court justices in Wisconsin serve 10-year terms. Thus judicial tenure is often measured in decades. It is impossible to predict what issues will come before them over that length of time. That is why voters are better served by asking how a candidate for the bench thinks about the relationship between a constitution, the laws, society, and the Court's role in relating to all three.

Rather than knowing if a candidate supports policies like parental choice, or limits on lawsuits, or strict environmental regulations, we might be better served by asking other questions. Here are some suggestions:

Do you believe the constitution should be read narrowly, so that government may do only those things specifically mentioned?

Do you believe the constitution should be read broadly, so that government has flexibility to do things not specifically prohibited?

Should statutes enacted by the legislature be read broadly, to allow administrative agencies flexibility in executing their powers?

Should statutes be read more narrowly, because laws can be revised more easily than a constitution?

Do you believe in "judicial restraint," in that courts should generally defer to legislatures and the Governor, even when they don't agree with their policies?

Do you prefer "judicial activism" that allows courts to object to laws when they lead to policy outcomes you, as a justice, find objectionable?

Such questions don't fit neatly into party platforms or interest group wish lists. They do ask judges -- and we voters -- to take a larger, longer view. They ask us how we want to organize the conditions that contribute to the common good.

And they help remind us why elections for the Supreme Court are important.

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