



## MI Supreme Court Adopts Rules to Address Judicial Conflicts of Interest

For the first time in its history, the Michigan Supreme Court will have written rules for justices to follow when asked to recuse themselves from a case due to conflicts of interest. After considering three proposals for judicial disqualification standards, the Court voted 4-3 on November 5<sup>th</sup> to adopt a revised version of Proposal C. The rule, which became effective on November 25<sup>th</sup>, applies to all Michigan judges. ([See Civil Procedure 2009-04](#))

A significant and controversial feature of Proposal C, which distinguished it from the other options, is an appeal provision. An individual justice's decision not to recuse him or herself can be appealed to the Court and, if circumstances warrant, a justice's peers could remove him or her from a case.

The rule is also the first in the nation to address conflicts of interest that may arise due to campaign expenditures. Justice Diane Hathaway offered the amendments to the proposed rule, indicating that recusal is mandated when due process rights are at stake, consistent with the U.S. Supreme Court's decision in *Caperton v. Massey Coal Company*. In that case, the Court ruled that the due process rights of a party to a case are violated when the opposing party has made extraordinary campaign expenditures to support the election of the judge deciding the case.

✓ [Watch the MSC hearing on the web: Nov. 5<sup>th</sup> MSC Administrative Hearing, Part 2](#)

Speaking in support of the rule, Chief Justice Marilyn Kelly said that judicial refusal to disqualify affects public trust and confidence in the Court. She referenced an American Bar Association finding that judges are reluctant to remove themselves from cases because it is a concession that they cannot be fair and unbiased.

Justices Maura Corrigan, Stephen Markman, and Robert Young voted against the measure. Justice Young said that disqualification motions would be used as a weapon to "strategically alter the philosophical orientation of the Court." Justice Corrigan spoke about it leading to members "cannibalizing each other" by their disqualification decisions.

LWVMI, Michigan Campaign Finance Network (MCFN), and several endorsing organizations had urged the Court to provide for recusal in cases that involve significant financial supporters of judicial elections and were pleased with this addition to the standards. However, LWVMI and MCFN also recommended that legal parties, attorneys, and firms that come before the Court be required to disclose campaign spending by affidavit. It appears that the rule does not include this provision.

Nonetheless, the disqualification standards are important to ensuring fair and impartial justice and can help to foster public confidence in the integrity of the Court.

## Wisconsin approves public funding for State Supreme Court elections

The Wisconsin Legislature approved a bill this month to create a public financing system for its Supreme Court elections. Candidates may opt to receive public funds for campaign expenditures if they meet eligibility requirements. Momentum for the bill grew from concerns about the dramatic increase of spending in recent races for the Wisconsin Court, similar to recent Supreme Court elections in Michigan. Entitled **Impartial Justice**, the program had broad support from all three branches of government and bi-partisan public support of more than two to one. The League of Women Voters of Wisconsin was a partner in grassroots efforts to support the legislation.



## Wisconsin approves public funding (continued from page 1)

To qualify for public funding, candidates must raise at least \$5,000 but not more than \$15,000 in donations of \$5 to \$100 from at least 1,000 different contributors. Small contributions from many donors are the measure of public support for the candidate. Candidates can receive up to \$100,000 in the primary and up to \$300,00 in the general election. They may also receive up to three times these amounts in matching funds, if outspent by an opponent who is not participating in the public financing system.

The bill contains a “rescue provision” to help participating judicial candidates respond to third party attacks. It would provide candidates with funds equal to the amount that a third party group spends attacking them, but only if the amount spent by the group exceeds 20 percent of the public financing received by the candidate. These payments could not exceed three times the amount of the original benefit.

The program does not raise taxes but receives funds through an income tax check-off option of \$3 per taxpayer. If the funding raised through the check-off is insufficient, general funds will be used to supplement the amount needed.

Impartial Justice is designed to restore the public’s trust in the Supreme Court by cooling the judicial elections arms race, freeing judicial candidates raising money from parties who may appear before them, and allowing judicial candidates to spend more time talking to voters instead of courting big donors.

*(Adapted from information provided by our colleagues at Justice at Stake)*

### Features of Public Financing Systems for Judicial Elections

- A voluntary, optional form of financing for judicial campaigns. Currently in effect in North Carolina and New Mexico and recently adopted in Wisconsin.
- To qualify for public funding, a candidate must raise a specified amount in small contributions from numerous donors.
- When the threshold level is reached, the candidate is eligible for public funds but must adhere to a spending limit.
- Additional matching funds are provided, up to a limit, for a candidate whose opponent does not use public funding.
- Funds for this use are generated by an income tax check-off for a specific amount of the taxpayer’s existing tax obligation.
- Wisconsin’s law contains a “rescue provision” to provide additional funds to publicly-funded candidates in response to third party attacks.

## Early Voting, Easy Voting

Voters in 32 states have the opportunity to vote in person before Election Day. Why not in Michigan?

There are several variations of early voting but all share the feature that any registered voter can cast their ballot in person before Election Day. Some states have a hybrid early and absentee voting option, in which absentee ballots can be cast at designated locations prior to Election Day. Some states allow voters to vote early just as they would on Election Day but at convenient, central locations. Although early voting appears to have a small impact on voter turnout, it offers additional convenience and is very popular among voters in the states that have it.

Legislation that provides for early voting has been introduced this year in both the House and Senate of the Michigan Legislature. SB 52 provides for voting to begin 15 days before an election and for polling



## MICHIGAN VOTER POWER CAMPAIGN

*Taking action to make voting easier and elections more transparent*

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### **Early Voting, Easy Voting (continued from page 2)**

locations to be open 7 hours on weekdays and 4 on Saturday. HB 4368 provides for the polls to be open 7 am to 5 on weekdays and 8 to 2 on Saturday, beginning 21 days before the election. Both bills have yet to receive a committee hearing.

Consistent with its support for provisions to increase the ease and accessibility of voting, the League of Women Voters of Michigan (LWVMI) supports the concept of early voting but has not taken a position on either of the bills. At present, LWVMI is working with other groups that support early voting to research other state's practices and design an approach that will work statewide. The system must accommodate differences between urban and rural communities and election administration capacity. But if 32 other states can do it, so can Michigan.

### **Become a Fan of LWVMI on Facebook**

You can now read and comment on postings about LWVMI's priority policy issues, news, and musings on [LWVMI's Facebook page](#).

**LWVMI is looking for people who wanted to vote in the last election but couldn't make it to the polls. If you know someone who would be willing to share his or her story, please contact [faircourts@lwwmi.org](mailto:faircourts@lwwmi.org).**

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