



INSTITUTE FOR THE
ADVANCEMENT
OF THE AMERICAN
LEGAL SYSTEM
UNIVERSITY OF DENVER

Institute for the Advancement of the American Legal System
&
The League of Women Voters of Colorado Education Fund

2007 Colorado Voter Opinions on the Judiciary

Background

In July 2007, a telephone survey of 726 registered Colorado voters was conducted on behalf of the Institute for the Advancement of the American Legal System (IAALS) and the League of Women Voters of Colorado Education Fund (LWVCO Ed Fund). IAALS and LWVCO co-sponsored the survey to better understand voter knowledge and opinions of Colorado's judiciary in a range of areas. Respondents were asked to describe their general perception of Colorado's courts and judges, but were also asked specific questions related to the process by which judges are selected and evaluated in the state.

IAALS and LWV were natural partners on this project, given both organizations' commitment to promoting fair, efficient and impartial courts in the United States. LWVCO participated in this project with funding from a multi-year LWV (national) program entitled *Safeguarding U.S. Democracy: Promoting an Independent Judiciary*. LWVCO has a history of leadership in the judicial selection arena. It was an integral part of the coalition that successfully pushed for passage of the 1966 constitutional amendment to change Colorado's selection process to merit selection. In 2006, IAALS released a seminal study on the issue of judicial performance evaluation standards entitled *Shared Expectations: Judicial Accountability in Context*. In August 2007, IAALS also co-hosted a panel with the American Judicature Society entitled *The Politics of Choosing Judges* and produced an educational video (a companion brochure will be published in winter 2008).

National Context

In recent years, discussions of the historic tension between judicial accountability and independence have increasingly spread from the halls of government and academia to households across America. Media reports of national cases such as *Bush v. Gore* and the Terry Schiavo matter have exposed citizens to this debate, but the controversy has surfaced on a local level as well. In states that have considered a change to their judicial selection process, concepts of what constitutes an "accountable judge" have been raised and argued.

In 2007, eight states (Alabama, Arizona, Kansas, Minnesota, Nevada, Pennsylvania, Missouri, New York) reviewed their judicial selection methods with a view to modifying the process in some fashion. In New York, a portion of the present selection system was ruled

National Context (continued)

unconstitutional and the U.S. Supreme Court is expected to rule on the matter in late 2007 or early 2008.

Voters in a half dozen western states—including Colorado—have also grappled with questions of judicial accountability and independence, as they considered ballot proposals that sought to recall, impeach, term-limit and even jail judges. Although all of these initiatives were defeated during the past midterm election, new versions of some of these proposals are expected to re-surface during the 2008 elections.

Colorado Context

If judicial accountability is measured in part by the quality of the selection process, Coloradans have good reason to feel confident. A recent Annenberg Public Policy Survey noted that respondents who live in states with partisan elections are more likely to believe that “judges are just politicians in robes.” Colorado has been home to the appointive process known as merit selection for 40 years, a system that produces some of the nation’s fairest courts and judges according to a 2006 U.S. Chamber of Commerce survey.

But IAALS and LWVCO believe that a crucial underpinning of Colorado’s reputation for a fair and accountable judiciary rests not only with its selection process, but also with its support for a credible performance evaluation system. In fact, many states consider Colorado to be the “gold standard” for judicial performance evaluation standards in the United States. Despite the accolades, a coalition of legislative, judicial and non-profit groups, including IAALS and LWVCO, are working together to “raise the bar” even higher. Expanded voter education and more effective dissemination of performance data are among the key recommendations. In December 2007, Senator Brandon Shaffer and Representative Terrance Carroll will review the final reform recommendations from a number of interested parties and propose legislation to improve the existing judicial performance evaluation statute during the 2008 legislative session.

National and statewide surveys consistently show that the public has generally positive—if somewhat diffused—opinions of their courts and judges, and that the more they know about the judiciary, the more confident they are in the institution. But many of these same surveys also show that our citizens lack even baseline knowledge about the fundamental workings of the courts, including those processes that have been built into the system to insure greater transparency and accountability.

IAALS and LWVCO undertook this survey to identify the gaps in voter knowledge about Colorado’s judiciary, analyze the data, and then make substantive recommendations to promote a more informed citizenry.

What’s at Stake?

There is no other institution in America that has as much potential to significantly impact all of our lives as the judiciary. Our courts have the power and the responsibility to decide whether we can keep our children, our homes, our jobs, even our freedom. Given this, public trust and confidence in its judges and courts is vital.

2007 Colorado Voter Opinions on the Judiciary Key Findings

People who have contact with the courts are more likely to believe that judges are fair.

- 49% of respondents said that they or a family member had been in a courtroom within the past 5 years
- Some of the major reasons for being in court: jury member (39%); family court matter (22%); criminal matter (22%); party in a lawsuit (18%)
- 88% of those with court experience said the judge was fair in their case

Popular culture has a strong impact on perception of courts and judges.

- Judge Judy is the top TV or movie role model for a "good judge" (38% cited her of the 29% who could name a "good" TV/movie judge)
- Traits that make Judge Judy a role model for women: tough love/not overly nice; fairness; control of courtroom; humor
- Traits that make Judge Judy a role model for men: fairness; "tells it like it is;" wisdom; takes appropriate action; truthfulness
- 49% of respondents said Colorado judges possess positive traits of favorite TV/movie judge; 30% said they did not; 21% did not know
- 50% of women and 43% of men would watch real Colorado state court trials on TV

Voting blind in judicial retention elections is commonplace.

- 52% of respondents who voted in judicial retention elections considered themselves uninformed about their choices
- Major barriers to learning about judges: 45% don't know where to get information; 32% don't trust information; 32% don't understand the information that is available to them
- Voting strategies of the "uninformed voter" are both frightening and funny: 28% vote to keep all judges; 24% vote randomly for/against; 16% vote to remove all; 7% vote on surname; 3% vote on gender, and "close your eyes and pick one" was cited a number of times
- Uninformed male voters were over twice as likely to vote to remove all judges as uninformed female voters (23% versus 10%)
- Among the 14% of voters who went to the polls, but did not cast a vote for/against judges, 97% cited lack of information as a reason
- 82% of respondents said they would try to get information about judges prior to an election
- Favored methods of receiving information in the future: special booklet mailed to house (86%); TV/radio program (78%); newspaper (76%); email was among the least preferred methods (40%)

2007 Colorado Voter Opinions on the Judiciary Key Findings (continued)

There is widespread confusion about the process for evaluating judges.

- 43% said judges don't get performance evaluations; 12% said they didn't know; 45% said they do get performance evaluations
- Of the 45% who said judges DO get evaluations, only 6% knew the correct process; others thought judges were evaluated by: public/voters (19%); don't know (15%); peers (13%); remainder of respondents were split among Bar, lawyers, senior judges, supervisors, government officials

Proponents of term-limits are significantly more likely to say they don't understand how courts work or to believe that typical community members cannot get a fair trial.

- 43% of respondents said they voted for term limits in 2006; 22% said they voted against; 35% didn't vote on the issue/don't know
- 18% who voted for term limits versus 27% who voted against term limits strongly agree that they understand how courts work
- 35% who voted for term limits versus 54% who voted against term limits strongly agree that a typical person can get a fair trial in their community
- 39% who voted for term limits versus 52% who voted against term limits know that judges receive performance evaluations
- 18% who voted for term limits versus 41% who voted against term limits know that there are judicial performance commissions
- 30% who voted for term limits versus 17% who voted against term limits strongly agree that they don't know where to get information about judges

Conclusion

The key findings of this survey form the basis for concern in the following areas:

- a majority of survey respondents are uninformed about judicial performance evaluation information, and hence are unprepared to vote responsibly in judicial retention elections
- existing sources of judicial performance information are not widely accessed by voters
- in the absence of basic knowledge about the way our courts work—including the process for evaluating judges—voters have a limited grasp of how “accountability” is built into the system
- there is a significant link between voters who don't understand the way the courts work and support for proposals that would limit judicial authority and independence

IAALS and LWVCO strongly believe that the massive blocks of uninformed voters—as exemplified by the findings in this survey—pose a serious threat to the foundation of our democracy. We also believe that in 21st century America, there is no excuse for a single voter with the interest in becoming informed, to “vote blind.” In the next phase of this project, we will seek strategic partnerships to provide voters with the tools they need to make informed choices in the 2008 election—and beyond.