

Outside ads, messy as they are, give voters substance

By JOHN COLEMAN
Posted: March 22, 2008

At the risk of being told to move to Chicago if that's how I like my elections, Wisconsin's much-maligned 2007 state Supreme Court election was not as bad as many observers claim.

The election contributed to calls for an end to Supreme Court elections. It led all seven members of the court to enter the policy-making process and demand expanded public funding of high court campaigns. And it has led candidates Louis Butler and Michael Gableman in this year's court race to outdo each other in their zeal to criticize and malign private groups that are exercising their free speech rights.

Let's all take a deep breath.

One measure of a campaign is whether voters learned anything. Judicial elections are notoriously vague, and candidates are usually very reluctant to be specific about issues. What voters can glean is a potential justice's general approach to his or her duties on the bench. In 2007, there was very little doubt that Linda Clifford had a judicial philosophy that was more likely to render decisions that would please liberals while Annette Ziegler had a philosophy that would be more likely to render decisions that would please conservatives. The race was nonpartisan, but the general philosophical leaning of the candidates was clear.

If voters were simply confused by the supposedly chaotic and misleading campaigning in 2007, then there should be no particular rhyme or reason to the voting results. Voters should have cast their ballots

on personality, on perceptions of scandal or on any number of factors other than the general judicial philosophy of the candidates.

In fact, the voting results were quite logical. An analysis of county-level voting shows that counties showing greater support for Republican Mark Green in 2006 also showed stronger support for Ziegler in 2007. The better Democrat Jim Doyle did in a county in 2006, the better Clifford did. The voting correlation between these races was quite high. Voters in 2007 accurately saw the more conservative court candidate as more conservative, and the liberal as more liberal, and voted accordingly. The correlation was not perfect, meaning factors such as the candidates' perceived experience and character also played a role in voters' decisions.

Critics of the election also bemoan its low turnout. It is true that turnout in Supreme Court elections is usually low. However, the facts from 2007 again tell a somewhat different story than the conventional wisdom. In 2007, there were no presidential primaries, state school superintendent elections or controversial statewide referendums joining the Clifford-Ziegler race on the ballot. Yet turnout in 2007 was nearly as high as in Supreme Court elections featuring these additional high-stimulus races. It was significantly higher than in previous years when the Supreme Court race was the only one on the ballot. More than usual, voters paid attention to this high-spending campaign.

Much of the vitriol directed toward the election concerned the role of outside groups. There is no doubt that these groups can sometimes say misleading things about the candidates - as can newspaper editorials and columns. And as the candidates do themselves. I see no one who can credibly claim a monopoly on accuracy.

Groups are criticized for cherry-picking from an opponent's background. But the candidates and

Advertisement

A bright idea in online advertising.
PrinterStitial® ads by Format Dynamics.

FormatDynamics®

Print Powered By FormatDynamics™

media do precisely the same thing. Candidates pick some past decisions or actions that they think will sell well with the public and emphasize them. They mention groups that benefited from their past actions. Media coverage hones in on a few areas they believe have broad public interest, even if they make up a small portion of the court's business.

Despite the vitriol, outside groups can sometimes add to the campaign. And while candidates, columnists and editorialists complain that these groups hijack campaigns, the reality is that outside groups sometimes raise issues that the media have missed or that the candidates would prefer to ignore. For example, Ziegler's handling of certain cases was not a story broken by the state's major media but by an advocacy group supporting her opponent.

These groups usually focus heavily on policy and issues. They don't get bogged down in the tactical and horse-race observations that play a heavy role in media campaign coverage. There is something dubious about Supreme Court candidates, who are in the First Amendment business, decrying that they don't get to set completely the dialogue of an election. Yes, free speech can be inconvenient.

Complaints also abound that campaign contributions by individuals and groups may affect judicial independence. Groups independently running ads that favor a candidate, it is said, may do the same. Yet newspapers have written friendly editorials and endorsed judicial candidates for decades. Presumably, they do this with some hope it will influence the outcome. Are they concerned that grateful justices will feel beholden to the business or ideological interests of these powerful media companies if a case comes before the court? Members of the media would scoff at the question, but it is exactly the charge they lodge at other groups who express support for a candidate.

Perhaps it is true that doing away with judicial elections is a good idea. The jury is still out on that issue in Wisconsin. What we do know is that justices on the Wisconsin Supreme Court wield tremendous power. Their decisions affect us all. Whether we have elections or appointments, it is unreasonable and undesirable to expect all those groups and individuals potentially affected by that power to sit on the sidelines and say nothing.

Frankly, I worry more about two Supreme Court candidates and major media voices telling groups to please sit down and keep quiet than I do about those groups running ads.

Free speech is messy, democracy isn't tidy and the 2007 election wasn't pretty. At times, it was even downright unpleasant. Yet the voters, always underestimated, it seems, did a pretty good job of sorting through it all and rendering their verdict.

John Coleman is a professor of political science at the University of Wisconsin-Madison. John Coleman is a professor of political science at the University of Wisconsin-Madison.

© 2005-2007, Journal Sentinel Inc. All rights reserved. |
Produced by [Journal Interactive](#) | [Privacy Policy](#)

Advertisement

A bright idea in online advertising.
PrinterStitial® ads by Format Dynamics.

FormatDynamics®

Print Powered By FormatDynamics™