

## **Solutions to Problems on the Michigan Supreme Court:**

### **Proposed Constitutional Amendments to**

#### **Reform Selection (Elections and Appointments) of Supreme Court Justices**

Justice Weaver proposes much-needed reforms for judicial selection on the Michigan Supreme Court. These reforms will reduce the Justices' terms to one 8-year term, the same length of time as the Governor's two 4-year terms; prevent the Governor from making unchecked appointments to fill vacancies on the Court; remove the political parties' controlling involvement in what are purportedly nonpartisan elections; and eliminate the huge amounts of money expended in recent campaigns for election as a Justice on the Michigan Supreme Court. Justice Weaver has been working on these issues since 1999, and now offers the benefit of her research and study.

Currently, while the Governor is limited to 8 years in office (two 4-year terms), and legislators are limited to 6 years in the House of Representatives (three 2-year terms) and 8 years in the Senate (two 4-year terms), Michigan Supreme Court Justices may continually be re-elected to serve repeated 8-year terms. A Justice may continue to be re-elected as long as that Justice has not reached age 70 at the time he or she takes office. Under the current system, it is possible for a Justice to serve up to 40 years on the Michigan Supreme Court. Justice Weaver's proposals will limit Justices to serving only one 8-year term on the Court—the same time limit which applies to Michigan's Governor.

Currently, when a Michigan Supreme Court Justice leaves the Court before the end of his or her term, the Governor fills the vacancy by appointing a replacement Justice to serve until the next general election. While there is a requirement that an appointee must have been an attorney for at least 5 years, there are no checks and balances limiting the Governor's appointment power. The advice and consent of the Michigan Senate is not required, nor is there accountability for whomever is appointed. As a practical matter, having an incumbency designation and ample special-interest financial support, whomever the Governor appoints as a replacement Justice will almost always be re-elected at the next election. In the Court's history, few Michigan Supreme Court Justices have ever lost a campaign for re-election. As a result, power blocs are often created, or are maintained, when a Governor appoints a Justice based on the Governor's party affiliation.

The problem with the Governor's unchecked appointment power to create power blocs on the Supreme Court cannot be overemphasized. Three of the seven

Justices now on the Michigan Supreme Court were appointed to fill vacancies on the Court by then-Governor Engler: Chief Justice Taylor, Justice Young, and Justice Markman. Those three Justices, plus Justice Corrigan, were first appointed to the Court of Appeals by then-Governor Engler to fill vacancies on that court. Justice Corrigan was openly and substantially supported by Governor Engler when she campaigned for a seat on the Supreme Court. It is significant, and troubling, that when Governor Engler appointed these 4 justices, not one of them had any prior trial judge experience. It is also noteworthy that the current 7 justices have been together for just over 8 years, longer than any group of Justices serving on the Michigan Supreme Court in the Court's over 170 years of existence.

Justice Weaver's proposals will reform the current unchecked system for filling a vacancy on the Court. It will provide for checks and balances by establishing a Judicial Qualifications Commission, composed of representatives from diverse sectors of Michigan, including representatives from the following interest groups: business, labor, law enforcement, legislature, judges, social services (public and private), corrections, environmental protection groups, education, and local government. This independent Judicial Qualifications Commission will provide 2 nonbinding candidate recommendations to the Governor. After considering the 2 proposed candidates recommended by the Judicial Qualifications Commission, the Governor will nominate 1 candidate for the Michigan Supreme Court. This nomination will be subject to the advice and consent of the Senate. At every stage in the selection process, the Judicial Qualifications Commission, the Governor, and the Senate will each be held accountable for their decisions as all of their decisions must be made with reasons in writing, promptly published, and released to the public, and all decisions must be accomplished within a 60-day time limit for each group. Any group failing to timely perform forfeits its power to act to the next group.

Currently, although the Constitution provides that judicial elections are nonpartisan, the political parties nominate candidates for election to the Michigan Supreme Court. Although the ballot does not show whether a candidate is a Democrat, a Republican, a Libertarian, or a member of any other political party, the political parties decide and control which names will appear on the election ballots. Justice Weaver proposes eliminating the political parties' power to nominate candidates for the ballot in the Michigan Supreme Court races. Under her proposal, candidates for Justice of the Supreme Court would get on the ballot by nomination petitions collected from the public, just as all Trial and Court of Appeals Judges currently must do.

Currently, shocking amounts of money are being raised by campaign committees for the candidates for the Michigan Supreme Court. In 2006, although she faced little opposition, over half a million dollars (approximately \$680,000) was raised for Justice Maura Corrigan's re-election campaign. Perhaps even more startling and disturbing, the Michigan Chamber of Commerce apparently spent another \$700,000 on campaign ads supporting Justice Corrigan's re-election. Justice Weaver proposes taking the fundraising and the soft money out of judicial campaigns, and instead having the campaigns supported by public funds, as North Carolina and New Mexico have already done and Wisconsin is seriously considering. (All 7 justices of the Wisconsin Supreme Court have publicly supported this much-needed reform.) In Michigan, at no additional public cost to taxpayers, the public money now earmarked for public funding for governor campaigns (which governor candidates have not been using) should be redirected to Supreme Court Justice campaigns.

In Michigan, the current problems with the election and appointment of Michigan Supreme Court Justices can only be solved when the people adopt amendments to the Michigan Constitution. The following are draft amendments to the Constitution designed to reform the Michigan Supreme Court Justice selection process.

These amendments will begin to eliminate the formation of power blocs on the Supreme Court and will reduce the shocking amounts of special interest money expended in judicial campaigns for election to the Michigan Supreme Court. The proposed amendments will provide for rotation in office and establish checks and balances within the Supreme Court, which are so necessary to prevent misuse and abuse of government power and to preserve our government "of, by, and for the people." Further, the amendments will pave the way for the creation of a Michigan Supreme Court composed of Justices most desired by the people—Justices who exemplify what every judge should be: Independent, Self-Restrained, Disciplined, who possess Common Sense, and are Just, Fair, Orderly and Professional—Justices thus deserving of the public's trust and confidence.

Justice Weaver's proposals provide clear and far-reaching solutions to the current and future problems of the Michigan Supreme Court. By taking decisive action through the adoption by the people of the proposed constitutional amendments, the people of Michigan will not only solve the problems on their own Supreme Court, but will also serve as an example and a leader for the nation.

The time has come for Michigan to act on proposals for reforming judicial selection of Justices for the Michigan Supreme Court.

