
HOUSE BILL 2661

State of Washington

62nd Legislature

2012 Regular Session

By Representative Hinkle

Read first time 01/23/12. Referred to Committee on Judiciary.

1 AN ACT Relating to the election of judges; amending RCW 29A.04.110,
2 29A.36.171, and 29A.52.231; adding a new section to chapter 29A.04 RCW;
3 creating a new section; and providing a contingent effective date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature finds that the debate over
6 how judges should gain the bench has gone on since the founding of our
7 nation and state. State judicial selection basically occurs by one of
8 two methods, either appointment or election. In Washington, we
9 currently use nonpartisan elections as the way to select judges. When
10 a state supreme court justice, state court of appeals judge, or a
11 superior court judge resigns or dies during a term of office, the
12 governor appoints a new judge to fill that position and the appointed
13 judge must run in the next election.

14 Over the past four decades, numerous citizens have become seriously
15 concerned about the judiciary overstepping its constitutional
16 boundaries and infringing on the rights of the people and the
17 constitutional prerogatives of the other two branches, particularly the
18 legislative branch, the people's branch. Because the judiciary has
19 used the doctrine of judicial review to override the self-expression of

1 free people and to override duly enacted laws, even those of long-
2 standing in both form and practice, and to impose itself directly into
3 legislative affairs and deliberations, the legislature is compelled to
4 establish a better method of electing judges for our time in order to
5 better protect the will of the people, defend its constitutional
6 prerogatives, and restore the balance of powers established in the
7 fundamental and paramount law.

8 It is critical that we have judges who are independent and apply
9 the law fairly and without favoritism, and we have judges who are
10 accountable to the public and who do not exercise their power
11 arbitrarily or unjustly. Knowledge is power. But many, if not most,
12 voters do not know much about a judicial candidate's legal philosophy
13 or where judges stand generally on issues of critical public importance
14 because of restraints imposed by the judicial branch itself. Although
15 judicial candidates should not state how they would decide a particular
16 case that is before the court, they should have the right to freely
17 express and incorporate their beliefs and opinions in any statement
18 made regarding any campaign or potential campaign for judicial office
19 or any issue pertaining thereto without legal or professional
20 retribution, negative consequence, or penalty to the standing,
21 evaluation, or privilege of the judge or the judicial candidate.

22 Article I, section 1 of the Washington state Constitution provides
23 that, "All political power is inherent in the people, and governments
24 derive their just powers from the consent of the governed, and are
25 established to protect and maintain individual rights." The election
26 of judges by the people is the best way to ensure judges who are both
27 independent and accountable at the same time.

28 Political scientists have determined that party label is probably
29 the most important factor in voters' decisions in judicial races.
30 Research has repeatedly confirmed that there are basic differences
31 between the democratic and republican judges who sit on state appellate
32 courts. Democratic judges tend to support a more liberal, expansive
33 view of the law compared to republican judges who tend to support a
34 more conservative, limited view of the law. In partisan judicial
35 races, the political party labels give most voters the information they
36 seek, and especially if judicial elections are highly competitive and
37 controversial, with the use of party labels, voters demonstrate an
38 ability to learn about candidates, correctly match them with their

1 positions on issues, and vote accordingly. There is much empirical
2 support for this common sense approach taken by most voters in casting
3 votes for partisan judicial candidates.

4 The legislature finds that partisan judicial elections have
5 substantial advantages over nonpartisan elections in that they provide
6 an additional, significant measure of self-government to voters. This
7 additional element of accountability to the public is critical. As the
8 legal system comes under increasing destructive pressures from the more
9 aggressive elements of well-financed activist groups, including various
10 sections of the legal profession, legal associations, legal educational
11 institutions, and other special interests, the people will be better
12 able to rein in the judiciary and block the continued deterioration of
13 the justice system.

14 Under these circumstances, informed voters will more than ever want
15 to know the party affiliations of judicial candidates, so as to avoid
16 those judicial candidates whose rulings would be more likely to result
17 in judges making public policy based on their personal preferences
18 rather than on the law itself. Modern legal scholars and social
19 scientists no longer deny that judges make policy. In a republican
20 system of government that Washington has established, policymakers must
21 be accountable to the people, either directly or indirectly.
22 Accountability requires institutional arrangements that strengthen
23 voters' ability to select officials who will, in the main, govern
24 consistently with the majority's policy preferences. Scheduled
25 partisan judicial elections more readily allow voters to hold judicial
26 policymakers accountable than do nonpartisan voting arrangements.

27 It is the intent of the legislature by this act to establish a more
28 appropriate and necessary means of electing judges in Washington state
29 in order to ensure that all political power is retained by the people,
30 to restore the balance of powers between and among the branches of
31 government as established by the people in the state Constitution, to
32 protect, maintain, and secure individual rights and the perpetuity of
33 free government, and to guarantee the right of self-government.

34 **Sec. 2.** RCW 29A.04.110 and 2005 c 2 s 4 are each amended to read
35 as follows:

36 "Partisan office" means a public office for which a candidate may
37 indicate a political party preference on his or her declaration of

1 candidacy and have that preference appear on the primary and general
2 election ballot in conjunction with his or her name. The following are
3 partisan offices:

- 4 (1) United States senator and United States representative;
- 5 (2) All state offices, including legislative, except (a) judicial
6 offices and (b) the office of superintendent of public instruction;
- 7 (3) All county offices except ~~((a) judicial offices and (b))~~
8 those offices for which a county home rule charter provides otherwise.

9 **Sec. 3.** RCW 29A.36.171 and 2004 c 271 s 170 are each amended to
10 read as follows:

11 ~~((1))~~ Except as provided in RCW 29A.36.180 ~~((and in subsection
12 (2) of this section))~~, on the ballot at the general election for a
13 nonpartisan office for which a primary was held, only the names of the
14 candidate who received the greatest number of votes and the candidate
15 who received the next greatest number of votes for that office shall
16 appear under the title of that office, and the names shall appear in
17 that order. If a primary was conducted, no candidate's name may be
18 printed on the subsequent general election ballot unless he or she
19 receives at least one percent of the total votes cast for that office
20 at the preceding primary. On the ballot at the general election for
21 any other nonpartisan office for which no primary was held, the names
22 of the candidates shall be listed in the order determined under RCW
23 29A.36.131.

24 ~~((2) On the ballot at the general election for the office of
25 justice of the supreme court, judge of the court of appeals, judge of
26 the superior court, judge of the district court, or state
27 superintendent of public instruction, if a candidate in a contested
28 primary receives a majority of all the votes cast for that office or
29 position, only the name of that candidate may be printed under the
30 title of the office for that position.))~~

31 **Sec. 4.** RCW 29A.52.231 and 2004 c 271 s 174 are each amended to
32 read as follows:

33 The office ~~((s))~~ of the superintendent of public instruction ~~((
34 justice of the supreme court, judge of the court of appeals, judge of
35 the superior court, and judge of the district court))~~ shall be

1 nonpartisan and the candidates therefor shall be nominated and elected
2 as such.

3 All city, town, and special purpose district elective offices shall
4 be nonpartisan and the candidates therefor shall be nominated and
5 elected as such.

6 NEW SECTION. **Sec. 5.** A new section is added to chapter 29A.04 RCW
7 to read as follows:

8 All judicial elections must be held at a November general election.

9 NEW SECTION. **Sec. 6.** This act takes effect January 1, 2013, if
10 the proposed amendment to Article IV, section 29 of the state
11 Constitution (HJR (H-2485)) is validly submitted to and is
12 approved and ratified by the voters at a general election held in
13 November 2012. If the proposed amendment is not approved and ratified,
14 this act is void in its entirety.

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