WPC Action Report: Supreme Court Fair Elections proposal Legislative result, and Next Steps

For the 2010 legislative session, Washington Public Campaigns supported two companion bills to establish a pilot program of public financing for state supreme court campaigns: HB1738 / SB 5912. The programs would be funded through a small surcharge ($3) on selected court filing fees.

At this writing, SB 5912 – entitled "Judicial Elections Reform Act" – has not been voted out of the state Senate. It likely won't be considered before they adjourn the special session, for several reasons, including the governor's promise to veto any bills except those directly part of a supplemental budget.

We came so close to enactment this session, it's hard not to feel disappointed that we didn't get to the governor's desk. Yet in perspective, we knew all along this would be an uphill fight – due primarily to the state's budget challenges, and also due to resistance in some quarters to the proposal itself, and to how the proposed program was to be funded (a surcharge on court fees).

Yet – we should consider progress on this issue as a huge forward step:

- We moved the bills way beyond our initial expectations, in a very challenging legislative environment;
- We focused legislative attention to the specific issue: Should courts be for sale to special interests? – and if not, how do we reform the judicial campaign finance system? In raising this issue, we moved likely votes in the Senate, from perhaps only 8-9 in support last fall, to 27-28 in support, and we maintained strong support among 32 co-sponsors in the House.
- Equally important, we demonstrated to the WashClean community – and to partner organizations and friends – that focused grassroots lobbying by citizens can change legislative minds and move mountains. It underscores the point: Never underestimate the power of the people, organized!

Here is a short summary of legislative plans and developments:

In pre-session planning last fall, we hoped the judicial bills would get as far as public hearings at the Ways and Means Committee level in at least one chamber – so that we could "vet" the proposed means to fund the program, and gain additional legislative support for the policy itself (public financing for state supreme court races).

In fact, we flew past that goal – perhaps with "wind in the sails" from the U.S. Supreme Court decision in Citizens United, and with determination that the Washington State Supreme Court is NOT for sale!

The House took up the bill – HB 1738 – with a public hearing in the House Ways & Means Committee (February 6th).

Details here: **http://apps.leg.wa.gov/billinfo/summary.aspx?bill=1738&year=2009**

However, HB 1738 was not subsequently voted out of committee – essentially dead for the session, although the bill was formally reintroduced (March 15th) in the special session, and sits on the shelf.

But the Senate held a public hearing on companion bill SB 5912, and then moved the bill beyond Ways & Means, onto Rules, and then onto the floor of the Senate, ready for a full Senate vote at the call of the leadership.

Details here: **http://apps.leg.wa.gov/billinfo/summary.aspx?bill=5912&year=2009**

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The bill was on the Senate floor for a vote February 16th – but was sidelined temporarily by a dispute whether the funding means was a "tax increase", and therefore whether a 2/3rds vote – or a simple majority – was necessary to enact the program. Within a week, Initiative 960 was modified by a bill signed by the governor and taking effect immediately, so that only a simple majority is needed to approve any revenue or tax increases. Also, SB 5912 was kept "alive" through a small appropriation in the Senate's proposed supplemental budget – giving the program a designation called NTIB – Necessary To Implement the Budget, so it is not subject to normal cutoff deadlines.

But in another turn of events, a March 5th letter from Chief Justice Barbara Madsen to House Speaker Frank Chopp asked the House NOT to pass E2SSB 5912 this year. The letter stated, "The Supreme Court supports ideas for election reform that would enhance the independence of the judiciary, but we are not convinced that public financing per se and this bill in particular serve that goal." It also cited "a long-standing position in opposition to funding the judicial branch through user fees."

Soon after, proponents of the program in the House informed WPC the House would likely not consider the bill this session, even if the Senate approved it. Next, leaders in the Senate apparently decided not to call SB 5912 for a vote on the Senate floor – although we believe there continued to be sufficient votes for approval. There is little doubt that debate on the bill would consume valuable Senate floor time – at a time (before the special session was called) when both chambers were rushing to finish action on high-priority bills.

The Senate bill was reintroduced March 15th for the special session. However, it is now extremely unlikely to be called to a vote because the governor and legislative leaders have vowed they will deal only with approval of a final state supplemental budget in the overtime legislative session.

So, what's next? We intend discussions over the summer among proponents of the bill, organizational allies, legislative sponsors, and members of the judicial community who say they support the program but prefer an alternate funding mechanism. Our goal this summer is to refine a proposal – hopefully with all groups on board, supporting – for the 2011 Legislature.

News reports from around the country make it clear that independence among states' high courts is a serious and growing concern. Increasingly wherever judges are elected, special interest campaign contributions appear to skew judicial election outcomes and jeopardize public trust and confidence in the impartiality of the courts. Justice-At-Stake is a national nonpartisan campaign (a partnership of organizations) working to preserve the independence and impartiality of our courts. More info: www.justiceatstake.org/

By November in Washington state, we'll see results from this year's state judicial races, where three seats on the state supreme court face re-election and perhaps challengers. We may see record-setting spending by special interests. If so, it will further demonstrate the risks of inaction and how important it is that our top court not be for sale! There may be similar reports from other states.

And, WPC intends to press ahead with advocacy of public financing of campaigns at every level – in Congress (via the Fair Elections Now Act, HB 1826 / SB 752), and at state and local levels – so that the outcome of elections is determined by voters, not by mountains of special-interest campaign cash.

March 25, 2010 • Craig Salins • Washington Public Campaigns

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