

# President's Column

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## ARE YOU PREPARED FOR YOUR JUDICIAL ELECTION OR RETENTION ELECTION IN NOVEMBER 2012?

The ousting of three Iowa Supreme Court Justices has sent shockwaves throughout the country for all judges, no matter their method of selection and retention. Not only are justices and judges in election states suddenly vulnerable to judicial opponents with large war chests, even those in retention-election states are now vulnerable on issues that may bring players backed by large war chests. Iowa, as a retention-election state, was not alone in encountering organized efforts to remove justices from state supreme courts. Alaska Justice Dana Fabe squeaked by in her retention election despite anti-abortion/pro-traditional-marriage issue opposition; three justices up for retention in Colorado staved off a redistricting-issue opposition; two Florida justices tied to an issue on federal health-care legislation won with the lowest approval rating ever; in Illinois, Justice Kilbride headed off big money, also over a redistricting decision; and four Kansas justices managed to keep their jobs with the assistance of a full-page campaign ad. In both Iowa and Colorado, the justices did not engage in any campaign activity. In Kansas they did. What was the strategy, if any, used in each of these states by these justices, and why? These are the types of questions that will be addressed in an upcoming AJA seminar and workshop.

According to an article within this issue of *Court Review*, *Iowa's 2010 Judicial Election: Appropriate Accountability or Rampart Passion?* by Professor Roy A. Schotland, "there was less support for retention, on average, than had been the case from 1998 to 2008. Support also declined even in states without organized opposition to retention. . . . The six states with organized opposition saw these declines in the percentage vote for retention: Iowa 27%-28%, Illinois 13%, Colorado 10%-13%, Kansas 6%-7%, Florida 6%-9%, and Alaska 7%." Gone are the days when retention-election judges could shake their

heads at their election brethren and think, "Boy do we have it better." In fact, because retention-election judges have no experience running campaigns and have a more difficult challenger—an elusive issue—some may argue that retention-election judges actually are in an inferior position to their election-selected counterparts.

The bottom line is well stated by Samuel W. Seymour, President of the New York City Bar Association, as quoted in Professor Schotland's article: "When a judge suffers an electoral defeat because he or she exercised judicial independence, we all suffer." The judiciary as the third branch of government, the branch that is seen as an impartial body that is responsible to balance the other two branches of government, may be in jeopardy of diminished power if judicial independence is threatened by ideologic or partisan politics. Judges and justices have a duty to protect the judiciary.

Although there are several national organizations that currently focus on judicial elections, they are restricted to some degree by their 501(c)(3)C3 non-profit status. The AJA as the Voice of the Judiciary® is a national judicial organization that is well positioned to address the challenges to come. Plans are in the works for a symposium that will involve national organizations, academia, lawmakers, sociologists, cultural experts, and, most important, justices and judges to edify all of us about the methods of selection and retention. In conjunction with this symposium, the AJA will hold a workshop tailored to give judges and justices the toolboxes and tools necessary to maintain their judicial independence—without fear of being ousted in either a retention or judicial election—in November 2012.

**MARK YOUR CALENDARS NOW! PLEASE JOIN THE AJA AND NATIONAL EXPERTS FOR A SYMPOSIUM ON THE METHODS OF JUDICIAL RETENTION, AND A COMPANION WORKSHOP ON JUDICIAL ELECTIONS AND JUDICIAL RETENTION ELECTIONS, MAY 17-19, 2012, IN NASHVILLE, TENNESSEE.**

