

WHAT IS MERIT RETENTION AND WHY DO I CARE?

By Michelle R. Drab

Back in the 70's Florida decided that the electorate should weigh in on Florida's appellate judges - the Supreme Court justices and the judges of the five appellate courts - through a system of merit retention elections. Replacing the previous system of contested elections, the new system was expected to remedy the suspected abuses of the previous system by having judges run uncontested every six years with the electorate simply giving an up or down vote on each judge up for retention.

So why is this suddenly an issue in 2012? Until recently, judges have faced little opposition. Although few voters typically vote on judges, those few who do have historically done so overwhelmingly in favor of retention. In fact, no judge has ever been removed from the bench as a result of a merit retention election. Recently, however, certain politically-motivated groups have formed to campaign against judges. In particular, a group called Restore Justice 2012 formed to campaign against the judges up for retention this year in order to combat a supposed "onslaught of judicial activism." (Interestingly, the group's website focuses more on soliciting donations than on imparting the basis for their concerns and claims of "activism.")

The problem is that, because most voters tend not to vote either way for judges, even a small but organized campaign can garner the few votes needed to oust a judge from the bench – a good thing for a political group hoping to influence Florida's judiciary. Essentially, certain groups have learned that, with a little effort and the magic of the internet, they have a good shot at shaping the Florida courts to their political leaning.

So what does this mean for you? What should you do? You should vote. If you previously assumed you need not vote because only responsible, informed people would or should vote and otherwise there are processes in place to monitor judicial performance, you need to know that the first of those assumptions no longer holds true. Active campaigns against judges means that some voters will form an opinion and render a vote based solely on the untested opinions of others.

Admittedly, becoming an informed voter with respect to judicial candidates is significantly more difficult than becoming an informed voter as to the various political candidates. Judges are prohibited from campaigning and prohibited from stating how they will decide issues in the future, so becoming informed about a judge requires some time and effort. It's one thing to listen to a political candidate's campaign speeches and find out where they stand on the issues, it's another thing to ponder through lengthy and complex legal opinions to figure out where every judge on the ballot stands on issues that are important to you.

But, as members of the Florida Bar, Florida's judiciary is our judiciary. We have a responsibility for it and to it. We need to vote. How much information is enough to make an informed voter? That's entirely up to you. Do whatever you need to do to feel comfortable enough to cast a vote one way or the other. Just remember that failing to vote is no longer a vote for the status quo. While opposition groups continue to campaign against Florida's judiciary, a non-vote is tantamount to a no-vote.