

To: Interested Parties

From: Kellyanne Conway, President & CEO
the polling company™, inc.

Date: March 2008

Re: Key Findings from a Survey of 500 Likely Voters in Wisconsin

On behalf of The Federalist Society, the polling company™, inc. conducted a statewide telephone survey of 500 likely voters in Wisconsin to assess their knowledge, opinions, and expectations of the state's Supreme Court. The survey revealed that Wisconsin's voting public approved of their current role in seating the state's highest court. They vowed to select those who purge all personal perspectives in their decision-making processes in order to ensure a restrained and responsible judiciary.

Wisconsin Voters Strongly Approve of the Current Method of Selecting Its State Supreme Court Justices.

By a margin of 2.75-to-1 (66%-24%), the likely voters surveyed endorsed the status quo, that is, non-partisan elections of Justices to their highest court. This embrace of free elections spanned the demographic spectrum as majorities of every major subgroup surveyed concurred with allowing the people to seat their own court. What's more, it is a method that attracts the often-illusory tri-partisan agreement: 70% of Democrats and Independents and 57% of Republicans expressed their approval, saying the way things are is the way they ought to be.

Respondents' desire to elect their State Supreme Court Justices was confirmed by their elevation of voters in a separate question as the body they believed *should* have the greatest input into who served on the bench: 78% chose voters from the list that also included the state legislature (8%), the governor (6%), and Wisconsin lawyers (4%).

The Electorate Embraces Strict Interpretation; Vetoes Injection of Personal Viewpoints into Official Rulings.

An eye-popping 77% of likely voters surveyed agreed that "judges should interpret and apply the law as written and not take into account their own viewpoints and experiences." By comparison, just 20% felt judges should migrate beyond this proscription and draw upon their personal beliefs and observations of facts and events when issuing decision from the bench. Big majorities of all three political parties adhered to this view, as 83% of Republicans, 81% of Independents, and 71% of Democrats agreed. This agreement extended to majorities of all age, gender, and regional cohorts as well.

This preference for strict construction was evidenced in response to other questions. By a margin of 6-to-1, voters said they would support a candidate who would “interpret the law as written” over one who would “take into account his personal views and experiences.” A majority of Independents (69%) and Republicans (72%) and exactly half of Democrats (50%) backed a candidate who would strictly *evaluate* the law. Again, both genders and all age and regional subgroups agreed.

Judicial Restraint Preferred Doctrine for Wisconsin Jurists.

After judicial restraint was defined for Wisconsin voters as “when a judge views his or her role as an evaluator of whether a law or lower ruling is in line with the state constitution,” 69% immediately pronounced it a “mostly positive” thing for the Wisconsin Supreme Court. Only 16% felt restraint was not a good principle for the court to follow, some 53% points lower than those who lauded it.

Voters were mixed in their independent evaluation of judicial activism, defined as “when a judge feels that his or her role is not simply to review the law as it is written, but instead to allow for new or evolving meaning of the law over time.” Forty-five percent felt it would be good doctrine for the court compared to 41% who believed it was not a proper doctrine.

When judicial activism and judicial restraint were pitted against each other in a type of head-to-head match-up, voters’ preference for judicial restraint was clear and unmistakable – **56% wanted the Wisconsin Supreme Court to practice restraint, 31% activism.** Though a tri-partisan majority did not emerge, members of all three political parties were all more likely to choose restraint than activism as the better judicial principle. Others particularly apt to favor restraint included men, senior citizens, conservatives, and Metro Milwaukee residents.

METHODOLOGY

On behalf of **The Federalist Society, the polling company™, inc.** conducted a statewide telephone survey of 500 likely voters in Wisconsin.

Interviews were conducted March 15-17, 2008 at a Computer-Assisted Telephone Interviewing (CATI) facility using live callers. The sample was randomly drawn utilizing a list of registered voters in Wisconsin. Potential respondents were then screened to reconfirm that they were registered to vote in the state and to assess their likelihood of voting in the April 1, 2008 election for State Supreme Court Justice, among other offices. Only those who reported they were very or somewhat likely to participate in the election were administered the rest of the survey.

The margin of error for the survey is $\pm 4.38\%$ at a 95% confidence interval, meaning that in 19 out of 20 cases, the data obtained would not differ by any more than 4.38 percentage points in either direction had the entire population of likely voters in Wisconsin been surveyed. Margins of error for subgroups are higher.

For additional inquiries, please contact Kellyanne Conway, President & CEO of **the polling company™, inc.**, at 202-667-6557 or kellyanne@pollingcompany.com.

Topline Data
Statewide Survey of 500 Likely Voters in Wisconsin

prepared for
The Federalist Society
by the polling company™, inc.

March 2008

Field Dates: March 15-17, 2008

Margin of Error: +/-4.38%

Introduction

- A. Are you 18 years of age or older and currently registered to vote here in Wisconsin, registered in a different state, or not registered at all?

100% REGISTERED IN WISCONSIN

- B. Next month, on April 1st, Wisconsin voters will have the chance to elect several state and district judges including a Justice to the Wisconsin State Supreme Court. There are no other offices on the ballot like Governor or President. Thinking ahead to the election, would you say that you will...(READ CHOICES)

65% DEFINITELY VOTE
35% PROBABLY VOTE

KNOWLEDGE OF THE WISCONSIN SUPREME COURT

1. How familiar would you say you are with the Wisconsin State Supreme Court and its rulings and decisions? Are you... (READ AND ROTATED TOP TO BOTTOM AND BOTTOM TO TOP)

50% TOTAL FAMILIAR (NET)

9% VERY FAMILIAR
41% SOMEWHAT FAMILIAR

49% TOTAL UNFAMILIAR (NET)

33% JUST A LITTLE BIT FAMILIAR
16% NOT AT ALL FAMILIAR

- DO NOT KNOW (VOLUNTEERED)
* REFUSED (VOLUNTEERED)

2. Who do you think **should** have the greatest input on who is selected to serve as a Justice on the Wisconsin State Supreme Court? (READ AND ROTATED, ACCEPTED ONLY ONE RESPONSE)

78% WISCONSIN VOTERS
8% WISCONSIN STATE LEGISLATURE
6% WISCONSIN GOVERNOR
4% WISCONSIN LAWYERS

- OTHER (VOLUNTEERED)
1% ALL OF THE ABOVE (VOLUNTEERED)
1% NONE OF THE ABOVE (VOLUNTEERED)
4% DO NOT KNOW (VOLUNTEERED)
- REFUSED (VOLUNTEERED)

3. Can you name any of the current Justices on the Wisconsin State Supreme Court or any of the people who are running for that office next month? (OPEN-ENDED. PRE-CODED LIST.) Probed: Can you name any others?

20% LOUIS B. BUTLER
13% MICHAEL GABLEMAN
10% SHIRLEY S. ABRAHAMSON
4% ANNETTE KINGSLAND ZIEGLER
2% N. PATRICK CROOKS
2% DAVID T. PROSSER, JR.
1% ANN WALSH BRADLEY
1% PATIENCE D. ROGGENSACK

2% OTHER
69% DO NOT KNOW/CANNOT NAME ANY
* REFUSED

WISCONSIN SUPREME COURT ELECTIONS

As you may know, there are seven Justices on the Wisconsin State Supreme Court. They are elected by Wisconsin voters in non-partisan elections (meaning the Justices do not identify as Republican or Democrat) for ten year terms. If there is a vacancy in between elections, the Governor of Wisconsin appoints a Justice to serve out the rest of that term. One current Wisconsin Supreme Court Justice is running for reelection next month.

4. Do you approve or disapprove of this method of judicial selection for Wisconsin's State Supreme Court? (PROBED: And do you STRONGLY or SOMEWHAT approve/disapprove?)

66% TOTAL APPROVE (NET)

23% STRONGLY APPROVE
43% SOMEWHAT APPROVE

24% TOTAL DISAPPROVE (NET)

11% SOMEWHAT DISAPPROVE
13% STRONGLY DISAPPROVE

5% NEED MORE INFORMATION/NO BASIS TO JUDGE
(VOLUNTEERED)
4% DON'T KNOW (VOLUNTEERED)
- REFUSED (VOLUNTEERED)

5. Which of the following will be MOST important to you in deciding how to vote for Wisconsin State Supreme Court in April? (READ AND ROTATED, ACCEPTED ONE RESPONSE)

60% CANDIDATE WHO WILL INTERPRET THE LAW AS IT IS WRITTEN
22% CANDIDATE'S PAST EXPERIENCE AS A JUDGE
10% CANDIDATE WHO WILL TAKE INTO ACCOUNT HIS PERSONAL VIEWS AND EXPERIENCES
4% CANDIDATE WHO IS ENDORSED BY THE WISCONSIN STATE BAR ASSOCIATION (AN ASSOCIATION OF LAWYERS)

1% OTHER (VOLUNTEERED)
3% DO NOT KNOW (VOLUNTEERED)
* REFUSED (VOLUNTEERED)

6. I am again going to read you the opinions of two people. Please tell me which one comes closest to your view.

PERSON 1: Judges should interpret and apply the law as it is written and not take into account their own viewpoints and experiences.

PERSON 2: Judges should go beyond interpreting and applying the law and take into account their own viewpoints and experiences.

(PROBED: AND WOULD THAT BE STRONGLY OR SOMEWHAT AGREE WITH PERSON 1/2?)

77% TOTAL AGREE PERSON 1 (NET)

55% STRONGLY AGREE PERSON 1

22% SOMEWHAT AGREE PERSON 1

20% TOTAL AGREE PERSON 2 (NET)

10% SOMEWHAT AGREE PERSON 2

10% STRONGLY AGREE PERSON 2

3% DON'T KNOW (VOLUNTEERED)

1% REFUSED (VOLUNTEERED)

7. Do you support or oppose giving candidates for judicial offices – such as State Supreme Court Justice – Wisconsin state taxpayer money to publicly finance their campaigns? (PROBED: And do you STRONGLY or SOMEWHAT support/oppose it?)

33% TOTAL SUPPORT (NET)

18% STRONGLY SUPPORT

15% SOMEWHAT SUPPORT

63% TOTAL OPPOSE (NET)

14% SOMEWHAT OPPOSE

49% STRONGLY OPPOSE

2% NEED MORE INFORMATION/ NO BASIS TO JUDGE (VOLUNTEERED)

2% DON'T KNOW (VOLUNTEERED)

- REFUSED (VOLUNTEERED)

8. To ensure impartiality, candidates for the Wisconsin State Supreme Court are prohibited from publicly offering their opinions about cases that might come before them in the future. Some believe that this should go further and that people running for judge should also be restricted from speaking about or producing campaign materials about other issues as well. Do you agree or disagree that candidates for State Supreme Court should be restricted from speaking in this way? (PROBED: And do you STRONGLY or SOMEWHAT agree/disagree?)

59% TOTAL AGREE (NET)

34% STRONGLY AGREE
25% SOMEWHAT AGREE

33% TOTAL DISAGREE (NET)

18% SOMEWHAT DISAGREE
15% STRONGLY DISAGREE

4% NEED MORE INFORMATION/ NO BASIS TO JUDGE
(VOLUNTEERED)
4% DON'T KNOW (VOLUNTEERED)
- REFUSED (VOLUNTEERED)

9. I will now read you the opinions of two people on this issue. Please tell me which one you agree with more. (ROTATED)

PERSON 1: The speech of candidates for State Supreme Court should be restricted because judges are different than other elected officials and are held to a higher standard of impartiality.

PERSON 2: The speech of candidates for State Supreme Court should not be restricted because it violates the First Amendment and prevents Wisconsin voters from obtaining the fullest information possible for deciding who is best-suited to serve on our State Supreme Court.

(PROBED: AND DO YOU STRONGLY OR SOMEWHAT AGREE WITH PERSON 1/2?)

45% TOTAL AGREE PERSON 1 (NET)

24% STRONGLY AGREE PERSON 1
21% SOMEWHAT AGREE PERSON 1

49% TOTAL AGREE PERSON 2 (NET)

26% SOMEWHAT AGREE PERSON 2
23% STRONGLY AGREE PERSON 2

3% DON'T KNOW (VOLUNTEERED)
* REFUSED (VOLUNTEERED)

JUDICIAL ACTIVISM/ RESTRAINT

[ROTATED QUESTION SETS 10-11 and 12-13 SO THAT SOME VOTERS WERE ASKED ABOUT JUDICIAL ACTIVISM FIRST AND OTHERS WERE ASKED ABOUT JUDICIAL RESTRAINT FIRST.]

10. How familiar are you with the concept of “judicial activism”? Would you say you are... [READ AND ROTATED TOP TO BOTTOM AND BOTTOM TO TOP]

36% TOTAL FAMILIAR (NET)

12% VERY FAMILIAR
24% SOMEWHAT FAMILIAR

63% TOTAL UNFAMILIAR (NET)

19% JUST A LITTLE BIT FAMILIAR
44% NOT AT ALL FAMILIAR

1% DO NOT KNOW (VOLUNTEERED)
- REFUSED (VOLUNTEERED)

“Judicial activism” is a term used to describe when a judge feels that his or her role is not simply to review the law as it is written, but is instead to allow for new or evolving meaning of the law over time.

11. Do you think judicial activism is a (ROTATED) mostly positive or mostly negative thing for the Wisconsin State Supreme Court?

45% MOSTLY POSITIVE
41% MOSTLY NEGATIVE
14% DO NOT KNOW (VOLUNTEERED)
* REFUSED (VOLUNTEERED)

12. How familiar are you with the concept of “judicial restraint”? Would you say you are... [READ AND ROTATED TOP TO BOTTOM AND BOTTOM TO TOP]

36% TOTAL FAMILIAR (NET)

5% VERY FAMILIAR
31% SOMEWHAT FAMILIAR

62% TOTAL UNFAMILIAR (NET)

23% JUST A LITTLE BIT FAMILIAR
39% NOT AT ALL FAMILIAR

1% DO NOT KNOW (VOLUNTEERED)
- REFUSED (VOLUNTEERED)

“Judicial restraint” is a term used to describe when a judge views his or her role solely as an evaluator of whether a law or lower court ruling is in line with the state constitution.

13. Do you think judicial restraint is a (ROTATED) mostly positive or mostly negative thing for the Wisconsin State Supreme Court?

- 69% MOSTLY POSITIVE
- 16% MOSTLY NEGATIVE

- 14% DO NOT KNOW (VOLUNTEERED)
- 1% REFUSED (VOLUNTEERED)

14. Based on the definitions I gave you, would you rather the Wisconsin Supreme Court practice (ROTATED) judicial activism or judicial restraint?

- 56% JUDICIAL RESTRAINT
- 31% JUDICIAL ACTIVISM

- 3% BOTH (VOLUNTEERED)
- 1% NEITHER (VOLUNTEERED)
- 7% DO NOT KNOW (VOLUNTEERED)
- * REFUSED (VOLUNTEERED)

MESSAGE TESTING

15. Some people have looked at recent decisions by the Wisconsin Supreme Court and said that the Justices are acting like “legislators in robes,” meaning they are essentially rewriting laws and writing new ones rather than just interpreting existing laws. Do you agree or disagree with that statement? (PROBED: AND WOULD THAT BE STRONGLY OR SOMEWHAT AGREE/DISAGREE?)

- 53% TOTAL AGREE (NET)**
- 25% STRONGLY AGREE
- 28% SOMEWHAT AGREE

- 28% TOTAL DISAGREE (NET)**
- 18% SOMEWHAT DISAGREE
- 10% STRONGLY DISAGREE

- 10% NEED MORE INFORMATION/ NO BASIS TO JUDGE (VOLUNTEERED)
- 9% DON'T KNOW (VOLUNTEERED)
- 1% REFUSED (VOLUNTEERED)

WISCONSIN SUPREME COURT CASES

I am now going to read you some actual cases that may be or have been considered by the Wisconsin Supreme Court.

16. In 2006, voters approved an amendment to the Wisconsin Constitution that defined marriage as between one man and one woman only. There is a lawsuit underway asking the courts to overturn this amendment. Do you believe that judges should overturn this amendment?

38% YES
57% NO

2% NEED MORE INFORMATION/ NO BASIS TO JUDGE
(VOLUNTEERED)
3% DON'T KNOW (VOLUNTEERED)
1% REFUSED (VOLUNTEERED)

17. Currently, the State of Wisconsin provides taxpayer-funded health insurance benefits to state employees and their spouses. In a case currently before the Wisconsin Court of Appeals, the court is deciding whether the State must also provide insurance benefits to unmarried domestic partners of homosexual state employees. Do you believe that the unmarried domestic partners of homosexual state employees should be entitled to taxpayer-funded health insurance benefits?

44% YES
52% NO

2% NEED MORE INFORMATION/ NO BASIS TO JUDGE
(VOLUNTEERED)
2% DON'T KNOW (VOLUNTEERED)
* REFUSED (VOLUNTEERED)

18. Wisconsin is one of two states in the country that does not allow people to carry concealed guns under any circumstances. In *State v. Fisher*, the Wisconsin Supreme Court upheld the guilty verdict of a business owner who was convicted of concealing a loaded handgun in the glove compartment of his vehicle, which he said was for safety when he transported large amounts of cash from his tavern to the bank every night. Do you agree or disagree with this decision? (PROBED: AND DO YOU STRONGLY OR SOMEWHAT AGREE/DISAGREE?)

52% TOTAL AGREE (NET)

34% STRONGLY AGREE

18% SOMEWHAT AGREE

42% TOTAL DISAGREE (NET)

11% SOMEWHAT DISAGREE

31% STRONGLY DISAGREE

3% NEED MORE INFORMATION/ NO BASIS TO JUDGE
(VOLUNTEERED)

2% DON'T KNOW (VOLUNTEERED)

1% REFUSED (VOLUNTEERED)

DEMOGRAPHICS

And now some questions for statistical purposes...

19. What is your age, please?

7% 18-24

10% 25-34

17% 35-44

24% 45-54

21% 55-64

20% 65+

- REFUSED (VOLUNTEERED)

20. Would you describe your racial or ethnic background as...(READ LIST)?

89% WHITE/CAUCASIAN

4% BLACK/AFRICAN-AMERICAN

4% HISPANIC/LATINO

1% ASIAN

2% OTHER (VOLUNTEERED)

- DON'T KNOW (VOLUNTEERED)

1% REFUSED (VOLUNTEERED)

21. In politics today, do you consider yourself to be a (ROTATED) Republican, Independent, or Democrat? (If Republican or Democrat, ask: “Are you a strong (Republican/Democrat) or a not-so-strong (Republican/Democrat)?” (If Independent ask: “Which way do you lean towards, the Democratic or the Republican party?”)

30% TOTAL REPUBLICAN (NET)

16% STRONG REPUBLICAN
6% NOT-SO-STRONG REPUBLICAN
8% INDEPENDENT LEANING REPUBLICAN

17% INDEPENDENT

49% TOTAL DEMOCRAT (NET)

10% INDEPENDENT LEANING DEMOCRAT
7% NOT-SO-STRONG DEMOCRAT
32% STRONG DEMOCRAT

1% OTHER (VOLUNTEERED)
3% DON'T KNOW/REFUSED (VOLUNTEERED)

22. Thinking for a moment about your political views...Do you consider yourself to be...?

43% TOTAL CONSERVATIVE (NET)

15% VERY CONSERVATIVE
28% SOMEWHAT CONSERVATIVE

21% MODERATE

32% TOTAL LIBERAL (NET)

20% SOMEWHAT LIBERAL
12% VERY LIBERAL

2% LIBERTARIAN
3% DON'T KNOW/REFUSED (VOLUNTEERED)

23. Gender

47% MALE
53% FEMALE

24. Region¹

11%	NORTHWEST
19%	NORTHEAST
38%	SOUTH
32%	METRO MILWAUKEE

¹ **Northwest Wisconsin** includes Ashland, Barron, Bayfield, Buffalo, Burnett, Chippewa, Clark, Douglas, Dunn, Eau Claire, Iron, Jackson, Pepin, Pierce, Polk, Price, Rusk, Sawyer, St. Croix, Taylor, Trempealeau, and Washburn Counties; **Northeast Wisconsin** includes Brown, Door, Florence, Forest, Kewaunee, Langlade, Lincoln, Marathon, Marinette, Menominee, Oconto, Oneida, Outgamie, Portage, Shawano, Vilas, Waupauca, and Wood; **South Wisconsin** includes Adams, Calumet, Columbia, Crawford, Dane, Dodge, Fond du Lac, Grant, Green, Green Lake, Iowa, Jefferson, Juneau, Kenosha, La Crosse, Lafayette, Manitowoc, Marquette, Monroe, Richland, Rock, Sauk, Sheboygan, Vernon, Walworth, Waushara, and Winnebago Counties. **Metro Milwaukee** includes Milwaukee, Ozaukee, Racine, Washington, and Waukesha Counties.