

TO: Interested Parties

FROM: Kellyanne Conway, President & CEO
the polling company™, inc./WomanTrend

DATE: October 12, 2010

RE: Key Findings: Statewide Survey of 500 Likely Voters in Illinois

*On behalf of The Federalist Society, **the polling company™, inc./WomanTrend** conducted a survey of 500 likely voters in Illinois on their knowledge and opinions of the Supreme Court of Illinois, forms of jurisprudence, and medical malpractice/tort reform. More information about the methodology of this survey can be found at the end of this memo.*

Illinois Voters Most Familiar with Illinois Supreme Court Rate Its Performance Negatively

Overall, 45% of Illinois likely voters said they were “very” (7%) or “somewhat” (38%) familiar with the rulings and decisions of the Illinois Supreme Court; 55% of Illinois voters said that they were “just a little bit” or “not at all” familiar with the Court’s rulings.

- Majorities of self-identified Democrats (55%), Independents (51%), and Republicans (56%), as well as majorities of men, women, and voters of all ages said they were unacquainted with the court’s efforts.

In a second question, and among the voters familiar with the Illinois Supreme Court, 65% judged the Court’s performance as “fair” (51%) or “poor” (14%) while 32% assessed it as “excellent” (3%) or “good” (29%). Among all voters, the Court earned a 25% excellent/good rating and a 56% fair/poor assessment.

- Sixty-three percent of self-identified Republicans, 58% of Independents, and 52% of Democrats offered fair/poor judgments of the Court. Pluralities of voters of all political stripes declared the Court’s performance to be just “fair” on the four-part grading scale.
- A gender “abyss” emerged with respect to this question: Men were more likely than women to judge the Court’s efforts as fair/poor (61% vs. 52%). Women were not significantly more likely than men to say the Court is doing an excellent or good job (26% and 24%, respectively); rather, women were seven points more likely than men to say that they could not judge (22% vs. 15%).
- Excluding the Chicago suburbs, majorities of voters in all regions of the state described the Court’s work as fair/poor. Though still more negative than positive, 50% of those in the suburbs said the Court is subpar.

Voters Want to Retain Their Influence in Illinois Judicial Selection

More than three-in-five (64%) likely voters surveyed said that “Illinois Voters” should have the “*greatest input on who is selected to serve as a Justice on the Illinois Supreme Court.*” Fourteen percent thought the responsibility should rest with the legislature, 11% felt it should be with lawyers, and 6% said it should be in the hands of the Governor.

- Across the demographic and political spectra, majorities of voters said that voters should have the most influence as to the composition of the Illinois Supreme Court. The loudest proponents of voter control included self-identified Republicans (74%) and conservatives (73%).
- Ideological moderates (20%) were notably more likely than average to seek a Supreme Court crafted by the Illinois Legislature.
- Women were nearly twice as likely as men to put the power of judicial selection in the hands of lawyers (13% vs. 7%).
- Ten percent of those residing in Chicago proper favored giving the Governor the most input (compared to no more than 4% in any other region). Nine percent of self-identified Democrats agreed (compared to 6% of Independents and 3% of Republicans).

By More Than 5-to-1 Voters Seek Justices Who Withhold, Rather than Incorporate, Personal Viewpoints

When presented with two opposing views, four-in-five (81%) of Illinois likely voters agreed with the suggestion that “*judges should interpret and apply the law as it is written and not take into account their own viewpoints and experiences*” while 16% agreed with the opposing view that “*judges should go beyond interpreting and applying the law and take into account their own viewpoints and experiences.*”

- Majorities of men, women, and voters of all ages, races, regions, and political party and ideological dispositions agreed with the argument that judges should exclusively interpret and apply the law as written.
- Voters more likely than the average to say judges should go beyond interpreting and applying included men (21%), 18-34 year olds (25%) and Blacks¹ (35%).
- There was no statistically-significant difference in attitudes about jurisprudence between those familiar and those unfamiliar with the decisions of the Court (83% vs. 79%).

¹ N=60

Voters Unacquainted with Terms of Jurisprudence, But Descriptions Elicit Support for Judicial Restraint over Judicial Activism

Majorities of voters admitted not knowing the terms “judicial activism” (58%) or “judicial restraint” (57%), however when read descriptions of the two judicial philosophies, voters were more negative than positive toward restraint and more positive than negative toward activism.

“Judicial activism” was defined as *“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.”* **To this definition, 50% of respondents were “mostly negative” and 38% “mostly positive.”**

- Men were overwhelmingly more negative than positive (58%-34%) while women were split (43% negative vs. 41% positive).
- Among all but 18-34 year olds, majorities of voters aged 35-44, 45-54, and 55-64, and a plurality of those aged 65 and older deemed judicial activism to be a poor practice.
- Whereas 50% of self-identified Democrats described the philosophy as “mostly positive,” the plurality of self-identified Independents (47%) and majority of self-identified Republicans (67%) declared it “mostly negative.”
- A majority of ideological liberals (57%) deemed judicial activism a “mostly positive” concept (vs. 33% mostly negative), while 69% of conservatives described it as “mostly negative” (vs. 23% mostly positive). Moderates split 43%-43%.
- Fifty-three percent of voters familiar with the Court said activism is harmful while 39% assessed it as helpful.

“Judicial restraint” was described as “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.” In reaction, **voters were four times more likely to assess the concept as “mostly positive” for the Supreme Court of Illinois as they were to declare it “mostly negative” (72%-18%).**

- Majorities of men, women, and voters of all ages, races, regions of the state, party self-identifications, and ideologies said restraint is “mostly positive” for the Court.
- Those more likely than most to say restraint is a “mostly negative” thing for the Court included Blacks (33%) and self-identified Democrats (24%).
- Seventy-two percent of voters who said they were familiar with the Court and 72% who said they were unfamiliar with it similarly deemed restraint to be “mostly positive.”

Finally, after learning the definitions of the two terms, voters were asked to choose between the two competing philosophies: **57% of voters favored judicial restraint while 33% preferred activism.**

- Men and women both opted for restraint over activism, though men did so by a larger margin (62%-30% vs. 52%-36%, respectively).
- Excluding 18-34 year olds, majorities of voters of all ages also favored restraint. The plurality (49%) of the younger cohort chose activism.

- Majorities of Whites and Blacks alike thought the Court should practice restraint (59% and 51%, respectively).
- Joining the 50% of voters in Chicago who felt restraint should be the leading philosophy were majorities of voters in all regions of the state, including as much as 65% in the South.
- The plurality of self-identified Democrats (49%) and majorities of Independents (55%) and Republicans (69%) thought restraint should dominate. Forty-seven percent of liberals, 50% of moderates, and 72% of conservatives agreed.
- Voters familiar with the Court preferred it practice restraint over activism (59%-32%).

Beyond a Doubt: Illinois Voters Have Serious Concerns about Lawsuit Abuse

Four-in-five (80%) of likely voters said that “lawsuit abuse, which is the filing of frivolous lawsuits by individuals or groups,” is a “very” (50%) or “somewhat” (30%) serious problem in Illinois. Just 17% dismissed it when they deemed it a “just a little bit” (11%) or “not at all” (6%) serious of a problem.

- Across the demographic and political spectra, majorities judged lawsuit abuse to be a serious problem within their state.
- Cohorts more likely than most to say lawsuit abuse is “just a little bit” or “not at all” serious of a problem included Blacks (32%), self-identified Democrats (22%), liberals (28%), and those who rated the performance of the Supreme Court of Illinois as “excellent” or “good” (30%).
- Majorities of those who favored activism (76%) or restraint (84%) aligned and said lawsuit abuse is a “very” or “somewhat” serious of a problem in the Land of Lincoln.

By More Than 2-to-1 Illinois Voters Favor Caps on Medical Malpractice Insurance

Voters were informed: “a ‘tort’ is a wrongful act by one individual that ends in injury to another. The phrase ‘tort reform’ refers to changing state laws to place limitations or ‘caps’ on the types and amounts of damages someone can be awarded in lawsuits when they sue the person or organization that they claim injured them.” To this information, 63% of likely voters surveyed said they support setting limits on how much someone can receive in damages from any one lawsuit; 33% opposed. Voters were nearly twice as likely to “strongly support” limitations as they were to “strongly oppose” (39%-20%).

- Majorities of men, women, and voters of all ages and regions of the state favored caps on damages.
- The majority of Whites (69%) supported limits, while the majority of Blacks (67%) opposed them.
- Self-identified Independents and Republicans overwhelmingly favored limits on damages (67%-28% and 77%-19%, respectively). Self-identified Democrats also narrowly preferred restrictions (50%-48%).
- Sixty-seven percent of voters familiar with the decisions and rulings of the Court backed limits on damages; so, too, did 61% of those unfamiliar with the Court.

- Nearly seven-in-ten who favored the Supreme Court of Illinois practice judicial restraint as well as 55% who favored it operate under an activist philosophy agreed on setting caps on damages.

Illinois Voters Want a Seat at the Medical Malpractice Reform Table From a list of five possible “actors” who could “have the most influence in making or reforming medical malpractice laws here in Illinois,” the plurality of respondents said “Illinois voters” should be in charge (36%). One-in-five (20%) favored putting the onus on state legislators, 19% thought the job should be that of doctors and other medical professionals, and 16% said the responsibility should rest with the Supreme Court of Illinois. Only 2% - less than the margin of error of the survey – thought the Governor should have the greatest input.

- Pluralities of voters across the demographic and political spectra wanted voters to have the most influence.
- Self-identified Democrats (26%) were more likely than the average to ask the Illinois State Legislature to take control.
- No subgroups were statistically more likely than the average to say that the power should be vested in doctors or other medical professionals.
- Self-identified Democrats (21%) and liberals (25%) stood out as more likely than most to prefer the Supreme Court of Illinois take the helm in reforming med mal laws.
- Voters who thought the Supreme Court of Illinois should operate under an activist philosophy were evenly split between vesting power in legislators (26%), voters (25%), and doctors (22%). Just 16% who held this view thought the Supreme Court of Illinois should be lead the effort.

Illinois Voters Want U.S. Senators Who Support Judges Who Adhere to the Law and Omit Personal Viewpoints in Rulings

Two separate questions revealed Illinois voters’ desires for federal judges, including Supreme Court Justices who believe their roles are limited to interpretation of the law. After being reminded that their U.S. Senators are granted the privilege of voting to confirm judges and Justices to federal benches, they were asked to evaluate the judicial philosophies such candidates could hold.

First, 59% of voters said they would prefer their U.S. Senator support in confirmation hearings federal judicial nominees who “*will interpret and apply the law as it is written and not take into account their own viewpoints and experiences*” while 34% favored their U.S. Senator vote for judges and justices who “*believe that their role as judges 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.*”

- Majorities of men, women, Whites, Blacks, and voters of all ages, regions of the state, and partisan self-identifications favored judges and Justices who exclude personal viewpoints from their decisions.
- Liberals (46%), self-identified Democrats (41%), self-identified Independents (41%), and voters residing in Chicago (39%) were more likely than the average to support their

Senator confirming individuals who see the role of the judge as allowing for new or evolving meaning of the law over time.

Second, by more than 2 ½ to-1 voters stated their preferences for a Senator voting to confirm to federal benches judges who “*will interpret and apply the law as it is written and not take into account their own viewpoints and experiences*” over those who “*will go beyond interpreting and applying the law and take into account their own viewpoints and experiences*” (68%-24%).

- The desire for judges and Justices who will **only** interpret and apply the law as written was held by no less than 61% of voters across the ages, genders, races, regions of the state, and partisan self-identifications.
- Subgroups of voters notably more likely than the average to seek judges and Justices who will “go beyond interpreting and applying” the law included liberals (37%), self-identified Democrats (34%), and moderates (29%).

METHODOLOGY

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

Interviews were conducted October 5-9, 2010 at a Computer-Assisted Telephone Interviewing (CATI) facility using live callers. The sample was drawn using a list of registered voters in Illinois. Respondents were then screened to ensure that they were registered to vote. They were screened by interviewers for likeliness to participate in the November 2010 elections; likeliness to vote was based on self-reporting, and did not take into account past participation in elections as an indicator. Sampling controls were employed to ensure representative and proportional numbers of respondents were interviewed by demographic characteristics such as age, gender, race, and geographic region, as those characteristics are reported by the latest publicly available voter registration figures from the State of Illinois and U.S. Census data.

The margin of error for the survey is + 4.4% at a 95% confidence interval, meaning that in 19 out of 20 cases, the data obtained would not differ by any more than 4.4 percentage points in either direction had the entire population of likely voters in Illinois been surveyed. Margins of error for subgroups are higher.

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