

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

DATE: October 12, 2010

RE: Key Findings from Statewide Survey of 500 Likely Voters in Michigan

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*On behalf of The Federalist Society, the polling company™, inc./WomanTrend conducted a statewide survey of 500 likely voters in Michigan. The survey queried voters as to their knowledge and opinions of the Michigan Supreme Court and its decisions and rulings, as well as of the different forms of jurisprudence. More information about the methodology of this survey can be found at the end of this memo.*

### **Most Michigan Voters Admit Unfamiliarity with Michigan Supreme Court; Those Who Are Acquainted with it Are Not Positive toward It**

Fifty-six percent of likely voters surveyed said that they were “just a little bit” (36%) or “not at all” (20%) familiar with the Michigan Supreme Court and its rulings and decisions. In contrast, 44% were familiar, but just 5% “very” and 38% “somewhat” so.

- Majorities of men and women, as well as of voters of all ages and regions admitted being unfamiliar with the Court.
- A narrow majority of self-identified Democrats (51%) was familiar, while sizeable majorities of self-identified Independents (58%) and Republicans (61%) said they were unacquainted with the Michigan Supreme Court. Similarly, 52% of liberals were familiar, while 61% of moderates and 57% of conservatives were unfamiliar.

In reviewing the Court’s performance, 23% of all voters judged it as “excellent” (1%) or “good” (22%) while 55% used the terms “fair” (47%) or “poor” (8%). Among voters who said they were familiar with the rulings and decisions of the Court, 32% judged its efforts as excellent/good while 63% deemed them fair/poor.

- Regardless of familiarity with the Court, 50% of self-identified Democrats, 56% of Independents, and 57% of Republicans assessed the Court’s performance as fair/poor.
- Seventy-three percent of Blacks<sup>1</sup> but 53% of Whites judged the Court’s work as fair/poor. Whites were no more approving than Blacks, but Whites were three times more likely than Blacks to admit not being able to judge the Court (23%-7%).

### **Voters Want the Power of Judicial Selection Vested in Them**

Respondents affirmed their role in the selection of Justices to the Michigan Supreme Court when 72% said that “Michigan voters” should “*have the greatest input on who is selected to serve as a Justice on the Michigan Supreme Court.*” Across the demographic and political spectra majorities of voters said that Michigan voters should have the most influence. Single-digit percentages said that the bulk of power should be with the legislature (9%), Governor (7%), or lawyers (6%).

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<sup>1</sup> N=54

### **Seven-in-Ten Voters Seek Judges Who Check Personal Viewpoints at the Courtroom Door**

Nearly three-fourths (74%) of likely voters in Michigan agreed (including 54% strongly) that *“judges should interpret and apply the law as it is written and not take into account their own viewpoints and experiences.”* Conversely, 25% agreed (with 15% strongly) 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 persuasions (by both party self-identification and ideology) said that judges should interpret and apply the law as it is written.
- Twenty-seven percent of voters in the Southeast and Southwest regions alike said that judges should go beyond interpreting and applying the law (compared to 13% in the Northern and Peninsula regions of the state).
- Sixty-nine percent of voters who said that they were familiar with the rulings and decisions of the Michigan Supreme Court said it is better for judges to not take into account their own viewpoints and experiences.

### **By 2-to-1, Michigan Voters Favor Judges Who Act As Referees, Rather than Players**

Sixty-five percent of survey respondents said they prefer *“a judge who applies the law as set by the peoples’ elected representatives, acting as a referee without bringing his or her personal preferences into the decision”* while 31% favored *“a judge who interprets the law in light of evolving standards and values, acting as someone who interprets the law in light of evolving standards and values, acting as someone who helps the law adapt to a rapidly changing society.”* This 65%-31% breakdown mirrors the 63%-31% divide that **The Federalist Society** found in a July 2008 survey of likely voters in Michigan.

- At least 57% of men, women, and voters of all ages, races, and regions preferred a judge who simply applies the law and keeps out his or her personal preferences.
- Majorities of self-identified Democrats (54%), Independents (60%), and Republicans (76%) favored the judge who sticks to the law and acts as a referee.
- Voters aged 18-34 (37%), those in the Southeastern region of the state (34%), self-identified Democrats (43%), liberals (44%), and moderates (37%) stood out as more likely than the average to favor a judge who takes into account evolving standards and values. Still, with the exception of liberals, majorities of voters in each of these cohorts preferred a judge with the opposite disposition.

### **More Than Three-in-Five Voters Unfamiliar with “Judicial Activism” and “Judicial Restraint,” But Basic Definitions Compel Restraint Over Activism by 2-to-1**

The terms “judicial activism” and “judicial restraint” were new concepts to 67% and 63% of voters, respectively. Given the opportunity to react to the following definitions, voters were far more approving of restraint than of activism when tested independently and when asked to choose between the two competing philosophies.

**“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.** *51% Mostly Negative vs. 36% Mostly Positive*

- Respondents who earlier said they were familiar with the Court reflected the average: 51% mostly negative vs. 37% mostly positive. Voters who said they were familiar with the term before hearing the description were notably more negative (66%-25%).
- Men were twice as likely to say “mostly negative” as they were to say “mostly positive” (60%-29%) while women split evenly: 43% mostly positive vs. 42% mostly negative.
- Fifty-two percent of Whites were unenthusiastic about restraint while 51% of Blacks were enthusiastic.
- Pluralities, and in some instances, majorities, of voters of all ages were sour toward restraint.
- Majorities of self-identified Democrats (54%) and liberals (56%) were mostly positive, while 49% of moderates, 50% of Independents, 65% of conservatives, and 69% of Republicans were mostly negative.

**“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.**

*69% Mostly Positive vs. 13% Mostly Negative*

- Voters familiar with the Michigan Supreme Court were three times more positive than negative toward restraint (68%-20%). Those who initially said they were familiar with the unaided term “judicial restraint” were four times more positive than negative (72%-17%).
- Majorities of men, women, and voters of all ages, races, regions, party identifications, and ideologies were affirmative of restraint.

When asked to choose between the two types of jurisprudence, voters by more than 2-to-1 favored the Michigan Supreme Court exercise restraint rather than activism (59%-26%).

- Voters of both genders preferred restraint over activism, but men did so by a larger margin than did women (66%-22% and 52%-31%, respectively).
- Though voters of all partisan stripes opted for restraint, Republicans did so by the largest margin (75%-14%). Independents preferred restraint by 17 points (50%-33%) and Democrats by 10 points (46%-36%).
- Voters acquainted with the rulings and decisions of the Michigan Supreme Court were more inclined than those not familiar to suggest the Court operate under a restrained philosophy:
  - Familiar: 63% Judicial Restraint vs. 29% Judicial Activism
  - Unfamiliar: 56% Judicial Restraint vs. 25% Judicial Activism

### **Voters Affirm the Importance of Stare Decisis in Case Rulings**

An eye-popping 88% of voters surveyed said that it is “very” (37%) or “somewhat” (51%) important for justices and judges to “rely on decisions made by past courts in cases with similar facts.” Ten percent deemed the practice of relying on precedent to be “not too important” (6%) or “not at all important” (4%). Demographic and ideological consistency emerged, as no less than 84% of any major subgroup deemed stare decisis to be “very” or “somewhat” important.

When asked to decide if “*more often than not should the Michigan Supreme Court rely on precedent or overturn precedent?*” voters favored depending on past decisions rather than upending them by 3½- to-1 (64%-18%), with the plurality saying “mostly” rather than “sometimes” rely (35% and 29%, respectively).

- Sixty-seven percent of men, 61% of women, 65% of Whites, 60% of Blacks, and at least 59% of voters in all age cohorts said the Michigan Supreme Court should look to past decisions instead of overturning them.
- There were no statistically-significant differences in the percentages of self-identified Democrats, Independents, and Republicans urging the Court to rely on precedent (60%, 61%, and 68%, respectively).
- Not only did a majority of those who favored judicial restraint earlier prefer in this question that the Court use past decisions as their bases for judgment (69%), but so too did 63% of those who earlier said the Court should operate under a judicial activism philosophy.

### **Michigan Voters Reluctant to Suggest Heavy Reliance on Decisions of Precedent Made with Personal Viewpoints and Experiences in Mind**

Voters were divided when asked how much the Michigan Supreme Court should “*rely on precedent if the rulings in those past cases that established the precedent were based not solely on the law, but in part on judges’ personal viewpoints and experiences.*” Overall, 45% said “a great deal” or “some,” while 48% said “not too much” or “not at all.” Notably, however, voters were more than twice as likely to say that the Court should rely on those rulings “not at all” at one of the spectrum as they were to say “a great deal” at the other end (30% vs. 12%).

- No more than 20% of any major demographic group by gender, race, age, or region said the Court should use past decision rooted in judges’ personal viewpoints and experiences “a great deal.” Conversely, at least 28% of each of the aforementioned subgroups said they should use the rulings “not at all.”
- Pluralities of self-identified Democrats (50%) and Independents (49%) though the Court should look to such decisions “a great deal” or “some,” while the plurality of self-identified Republicans (55%) said they should use them “not too much” or “not at all.”

Separately, 37% of voters said that current Justices should rely upon their personal viewpoints and experiences “a great deal” (7%) or “some” (30%) when deciding to overturn precedent. Conversely, 59% said they should insert personal opinions either “not too much” (25%) or “not at all” (34%).

- Sixty-one percent of men and 56% of women wanted Justices to rely “not too much” or “not at all” on their personal views and experiences when evaluating whether to retain or upend precedent.
- Fifty-three percent of self-identified Democrats and Independents alike, as well as 67% of Republicans favored little to no dependence on personal viewpoints and experiences for Justices when deciding to overturn a case.

### **Voters Value Precedent for Efficiency and Consistency**

When presented with two opposing opinions on the role of precedent, 56% of voters agreed – including 28% strongly and 28% somewhat – that *“when the Supreme Court evaluates cases, relying on precedent is very important because doing so establishes efficiency and consistency for the courts.”* Thirty-seven percent agreed with the alternative view – including 21% strongly and 16% somewhat – that *“when the Supreme Court evaluates cases, relying on precedent is not that important because doing so relies too much on the opinions of one court.”*

- Excluding 35-44 year olds and those in the Northern part of the state, across the demographic spectrum majorities affirmed the importance of precedent. Voters aged 55-64 were in greatest agreement (64%).
- Fifty-six percent of self-identified Democrats, 59% of Independents, and 55% of Republicans agreed that past cases should serve a critical purpose in decision-making.
- No more than 44% of any major demographic or political subgroup said that “relying on precedent is not that important.”

### **Michiganders Object to Case Law from State’s Supreme Court**

Respondents were read three descriptions of precedents recently overturned and asked to evaluate each as good or bad decisions.

*Case 1: When the Michigan State Legislature passed a no-fault automobile insurance law, they agreed that the only people who could sue for non-economic, “pain-and-suffering” damages were people who sustained serious impediments of a bodily function. The Michigan Supreme Court upheld this in 2004. However, this summer, after a new judge was elected and the ideological composition of the court changed, the Michigan Supreme Court reversed the Court’s six-year-old decision and ruled that people who have only sustained temporary impairments are able to sue in order to receive pain-and-suffering damages.*

**Fifty-five percent of respondents surveyed said that this decision was a “bad” one (18% “probably” and 37% “definitely”). Thirty-five percent deemed it a “good” decision (15% “definitely” and 20% “probably”).**

- Among all but African-Americans, self-identified Democrats, and moderates, majorities of all demographic and political subgroups deemed the decision a bad one.
- Voters familiar with the Michigan Supreme Court were 16 points more likely to declare the case a poor decision as they were to laud it (54%-38%).
- Majorities of voters who favored restraint (57%) or activism (52%) offered in unison their disapproval of this decision.

*Case 2: Also as a part of the Michigan no-fault automobile insurance law, the Michigan Catastrophic Claims Association was established. This is used to help insurance companies pay unlimited lifetime benefits for medical care for accident victims because insurers cannot limit how much they will pay out in benefits. Michigan drivers pay for the Association in fees. In 2008, the Michigan Supreme Court ruled that how much the Michigan Catastrophic Claims Association is required to pay is only the QUOTE “reasonable” END QUOTE charges, meaning that if the average rate for nursing care is \$22 per hour, the Association cannot seek to have care compensated at \$54 per hour. But a year later, the Michigan Supreme Court changed that in ruling that the Association is required to pay any and all claims to insurance companies, regardless of whether or not they are QUOTE “reasonable” END QUOTE.<sup>2</sup>*

**Fifty-six percent of voters disapproved of this decision and 30% approved. Survey respondents were twice as likely to deem this decision “definitely bad” as they were to cite it as “definitely good” (33% vs. 16%).**

- Self-identified Republicans and Independents were notably critical of this decision (66% bad decision vs. 20% good decision among the former and 51% bad decision vs. 33% good decision among the latter). Only the plurality of Democrats disapproved (48% bad decision vs. 39% good decision).
- While Whites were two times more likely to criticize than laud this decision (59%-27%), Blacks were 26 points more likely to praise it (58%-32%).
- Fifty-four percent of voters who earlier expressed a penchant for judicial activism decried this decision, as did 60% of those who favored judicial restraint.

*Case 3: There are certain requirements that must be met in order for someone to bring a lawsuit against another person or a business. For years, the Michigan Supreme Court upheld decisions that required the person bringing a lawsuit to prove that they personally had or were about to be injured by the doing of the person or business they were suing. Recently, the Michigan Supreme Court overturned those past decisions and found that one need not be an actual victim in order to sue, but just have some QUOTE “substantial interest” END QUOTE.<sup>3</sup>*

**By more than 3-to-1 voters judged this decision to be a bad one rather than a good one (69%-22%). Not only did a majority criticize it, but nearly one-half deemed it “definitely a bad decision” (47%). In contrast, 12% judged it to be “definitely a good decision.”**

- While self-identified Democrats, liberals, and moderates were more likely than the average to support the ruling, majorities of the aforementioned cohorts disagreed (57%, 56%, and 63%, respectively). They were joined by 70% of Independents, 79% of Republicans, and 77% of conservatives.

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<sup>2</sup> [http://www.martindale.com/members/Article\\_Atachment.aspx?od=299306&id=770078&filename=asr-770118.SuddenReversal.pdf](http://www.martindale.com/members/Article_Atachment.aspx?od=299306&id=770078&filename=asr-770118.SuddenReversal.pdf)

<sup>3</sup> <http://courts.michigan.gov/supremecourt/Clerk/04-10/138401/138401%20Opinion.pdf>



- Not only did majorities of men and women agree that it was a bad decision (72% and 65%, respectively), but pluralities of both genders said it was “definitely” a poor ruling (47% and 46%, respectively).
- By a margin of more than 2-to-1, voters who earlier expressed familiarity with the Court argued that the Justices made the wrong ruling rather than the right one (65%-25%).
- Seventy-four percent of voters who favored judicial restraint as well as 63% who preferred the counterpart of judicial activism both agreed that this decision was not well-made.

### **Two-in-Three Voters Say Michigan Supreme Court’s Pro-Lawyer Rulings Harmful to State’s Economy; Most Say Rulings Made with Interests of Lawyers Elevated Above Those of the State and Its Citizens**

Sixty-eight percent of voters said that it is “**mostly negative**” for the state’s economy that “*the Michigan Supreme Court has made it easier for people and trial lawyers to bring lawsuits here in Michigan;*” 18% said this outcome is “mostly positive” for the state’s economy.

- No less than 59% of men, women, and voters of any age group or region of Michigan said that the state will suffer negative financial consequences as a result of making it easier for trial lawyers to sue.
- Fifty-seven percent of self-identified Democrats, 65% of Independents, and 82% of Republicans said that aligned in agreement that the state stands to lose economically as a result of reduced barriers to litigation.

Separately, 67% of voters said that the Court’s rulings “have created an environment in which it is easy for lawyers to make money from filing lawsuits on behalf of their clients,” while 24% felt the decisions have been “made with the best interests of the people and the State of Michigan in mind.”

- Sixty-four percent of men and 69% of women felt the interests of the lawyers were given greater priority.
- Though their levels of agreement varied, majorities of self-identified Democrats (53%), Independents (62%), and Republicans (83%) suggested that well-being of attorneys is being given greater weight than that of the state and its people.
- Sixty-nine percent of Whites said that the Court’s rulings have fostered a pro-lawyer climate, while 51% of Blacks felt that the Justices had the best interests of the people and state in mind.
- Majorities of voters in all regions of the state felt marginalized, as 73% in the Northern/Peninsula region, 66% in the Southeast, and 64% in the Southwest said that the decisions of the Court have made it easier for lawyers to sue.

## **METHODOLOGY**

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

Interviews were conducted October 5-8, 2010 at a Computer-Assisted Telephone Interviewing (CATI) facility using live callers. The sample was drawn using a list of registered voters in California. 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 Michigan 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 Michigan been surveyed. Margins of error for subgroups are higher.

For additional inquiries, please contact Kellyanne Conway, President & CEO of **the polling company™, inc./WomanTrend** or Karen Bentley Steward, Senior Research Analyst, at 202-667-6557 or [Kellyanne\(at\)pollingcompany.com](mailto:Kellyanne(at)pollingcompany.com) or [ksteward\(at\)pollingcompany.com](mailto:ksteward(at)pollingcompany.com).